

Indigenous Self-Determination within the  
Liberal Democratic State:

Ngäi Tahu Rangatiratanga in the Post-Settlement Era

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## Abstract

Ngāi Tahu are an indigenous people who have utilised the tools of the liberal democratic state in order to sustain and grow their culture. Interview material from members of Ngāi Tahu, indigenous self-determination literature and liberal democratic theory are drawn upon in order to understand how contemporary Ngāi Tahu rangatiratanga operates. The literature indicates that there are aspects of indigenous self-determination that are incongruous with those of liberal democratic thought and this suggests that the practice of rangatiratanga within the liberal democratic state is not possible. The current position of Ngāi Tahu challenges this point reached within the literature; they claim to exercise rangatiratanga within a liberal democratic state through being economically independent.

This thesis proposes that Ngāi Tahu have responded to the clash between these two world views by practicing rangatiratanga in a way that is compatible with the existing state while continuing to understand rangatiratanga that in a way that reinforces their identity as tangata whenua. This proposal reflects the findings of interviews conducted with representatives from six Ngāi Tahu papatipu rūnaka; Wairewa, Taumutu, Tuahiwi, Rapaki, Koukourarata and Onuku as well as an interview conducted with Sir Tipene O'Regan.

The difficulty lies with resolving whether the theory is at fault or whether Ngāi Tahu have just become economically independent and are therefore not exercising rangatiratanga. This outcome heavily depends upon the ability of Ngāi Tahu to sustain an indigenous identity from within a state structure that is based upon individuals having and equal rights. This thesis is unable to conclusively comment on the outcome for two reasons. First, it is too soon after the Ngāi Tahu settlement to assess whether Ngāi Tahu have been able to sustain an indigenous identity while operating within a liberal democratic context. The interview material indicates that Ngāi Tahu are presently resolving how to synthesise aspects of their culture with liberal democratic principles. Secondly, the theory is ill equipped for assessing a scenario that appears to have aspects of both indigenous self-determination and liberal democratic principles. If Ngāi Tahu claim to exercise rangatiratanga from within a liberal democratic state then this demands the development of a new theoretical framework that is flexible enough to assess this position.

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## Introduction

Ngāi Tahu are an indigenous people who claim to be exercising rangatiratanga from within a liberal democratic state.<sup>1</sup> If we are to examine Ngāi Tahu rangatiratanga in a contemporary context, this requires an understanding of the principles that underpin the liberal democratic state as well as those underlying an argument for indigenous self-determination. However, the literature indicates that there is an inherent clash between these two perspectives.

It is apparent from discussions on indigenous rights and liberal democratic thought within the literature that there is a tendency to bluntly argue from one point of view or the other.<sup>2</sup> Proponents of indigenous rights claim, amongst other things, that indigenous people were in a land first, their established sovereignty was not extinguished and indigenous identity is dependant upon their status as the first inhabitants of a land. Liberals respond by questioning the legitimacy of an indigenous claim based upon prior inhabitancy. The liberal mind is focused on the principle of individual equality and has difficulty with a claim that appears to be founded on the simple basis that “we were here first”. This is a stalemate. Debate that embarks upon either view inevitably becomes locked into a “Oh, no you’re not” versus “Oh, yes we are” scenario.

This thesis looks outside of the literature to the position of Ngāi Tahu, an iwi who claim to be exercising rangatiratanga from within the New Zealand state, and argues that it is time for this stalemate to be broken. It is proposed that the current positional stance within the literature does not provide adequate tools for assessing contemporary rangatiratanga and that political reality demands for these two oppositional world views to engage.

Indigenous self-determination and tino rangatiratanga are not easy terms to pin down. This has been identified by Maaka and Fleras:

*The notion of tino rangatiratanga is subject to a host of different interpretations. Depending on the person or context, reference to tino rangatiratanga can be employed to justify (a) Māori power and empowerment, (b) self-determination and control over jurisdictions and destinies, (c) biculturalism and partnership, (d) Māori control*

<sup>1</sup> See Chapter One, p 11 for definition.

<sup>2</sup> For example see Waldron, J. “Indigeneity? First Peoples and Last Occupancy.” *New Zealand Journal of Public and International Law*. November, 2003. p. 55 – 82.

*over Māori things within a Māori value system, (e) restoration of Māori mana; and (f) Māori cultural autonomy and territorial development. (Maaka & Fleras, 1997: 28 – 29)*

To complicate matters further, there is also debate as to where rangatiratanga is located: “For some, tino rangatiratanga resides within the hapū; for others, the iwi; for still others only Māori as a collectivity; and for yet others still, within the individual. ‘Radical’ views equate tino rangatiratanga with absolute Māori ownership and political control. Moderate versions suggest a partnered biculturalism within a framework of modified autonomy” (Ibid).

In order to avoid an endless discussion on the meaning and location of rangatiratanga, there are limitations placed upon the use of the term within this thesis. First, the primary concern is how it operates within the liberal democratic state; therefore, arguments for absolute Māori sovereignty are not discussed.<sup>3</sup> Second, the focus is upon Ngāi Tahu. Although comments on rangatiratanga from sources outside of Ngāi Tahu are drawn upon, this is only done in order to contribute to the understanding of Ngāi Tahu rangatiratanga. Third, this thesis concentrates upon the aspects of rangatiratanga that conflict with liberal democratic principles.

#### *Interview material*

Seven interviews were conducted with Ngāi Tahu people for the purpose of this thesis. In order to gain an understanding of Ngāi Tahu rangatiratanga six representatives from different Ngāi Tahu papatipu rūnaka were interviewed.<sup>4</sup> Ngāi Tahu is grouped into a total of eighteen papatipu rūnaka, these are described by Ngāi Tahu as “original/regional assemblies – whose representatives form the governing body called Te Rūnanga o Ngāi Tahu.” (Te Rūnanga o Ngāi Tahu website <http://www.ngaitahu.iwi.nz/>, 10 October 2003)<sup>5</sup> Sir Tipene O'Regan was

<sup>3</sup> Indigenous sovereignty is not discussed within this thesis; it has a variety of meanings with connotations of aspiring to obtain independent statehood. See Durie, 2000: 218 for the discussion of the term “sovereignty” in relation to Māori self-determination.

<sup>4</sup> References p. 79.

<sup>5</sup> Further detail on Ngāi Tahu tribal organisation is specified in Chapter Four, p. 48-50. For further detail on the origin of the term “rūnaka” for Ngāi Tahu see Tau, T. “Rūnanga a Tahu”. Te Karaka, Makariri/Winter, 1996 p. 10 –13.

also interviewed in order to provide insight as to the Te Rūnanga o Ngāi Tahu (TRONT) perspective of Ngāi Tahu rangatiratanga.<sup>6</sup>

The participants were questioned on their understanding of rangatiratanga and how the Ngāi Tahu settlement had impacted upon Ngāi Tahu rangatiratanga. Their responses are woven throughout this thesis and have significantly contributed to the formulation of the main argument – that the Ngāi Tahu understanding of rangatiratanga is quite different to the way it is actually practiced. The Ngāi Tahu understanding of rangatiratanga is based upon concepts of land, whakapapa and tribal authority while the practice of rangatiratanga relies upon economic independence and financial might. This thesis argues that this difference between the understanding and practice of Ngāi Tahu rangatiratanga is a direct result of the liberal democratic state's inability to acknowledge the basis of an indigenous claim to self-determination, being a claim to rights based upon being the first inhabitants of a land.

### *The literary debate*

The first chapter locates the debate between liberalism and indigenous rights within the literature and establishes that there is a clash between the principles of liberal democracy and a claim to indigenous self-determination. Instead of attempting a comprehensive review of both of these positions, the first chapter focuses upon the aspects of each world view that conflicts with the other. One of the most basic principles of liberalism is that everyone should be subject to the same law and thus, be treated equally. Therefore, a claim to rights or special status on the basis of being the first inhabitants of a land is considered to be unequal and immoral. The difficulty here is that a claim to indigenous self-determination is also closely tied to indigenous cultural identity. The point of tension between the two perspectives is that the liberal drive for individual equality has the potential to undermine indigenous cultural identity. The theory discussed in Chapter One indicates that due to this clash between these two perspectives, the practical exercise of indigenous self-determination within the liberal democratic state is not possible.

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<sup>6</sup> References p. 81.



### *Placing the theory within context*

The second chapter places this tension in the theory within context by drawing upon specific examples from the Ngāi Tahu settlement. Three provisions within Ngāi Tahu cultural redress are discussed and illustrated with interview material. These examples indicate that the position reached within the literature reflects reality. Due to there being a fundamental clash between the principles of liberal democracy and indigenous self-determination, it would appear that the exercise of indigenous self-determination from within the liberal democratic state is not possible. Cultural redress mechanisms attempt to acknowledge Ngāi Tahu culture by using the tools of the liberal democratic state. However, such measures are ill-equipped for providing practical recognition of rights derived from being the first inhabitants of the land. This would compromise the existing legal framework that is based upon the principle of individual equality between citizens. This assessment of cultural redress within the Ngāi Tahu settlement not only suggests the theory reflects political reality, it also raises the question as to how Ngāi Tahu are to sustain their indigenous identity within a state that is not capable of giving practical recognition to indigenous status.

### *The Ngāi Tahu response*

Ngāi Tahu challenge the position reached within the theory by claiming to exercise rangatiratanga from within the liberal democratic state. Chapter Three looks at the difference between the understanding and practice of Ngāi Tahu rangatiratanga and argues that Ngāi Tahu have responded to this position by exercising rangatiratanga in a way that is compatible with the existing state structure while continuing to understand rangatiratanga in a way that reinforces their indigenous identity.

First, the Ngāi Tahu understanding of rangatiratanga is located within the literature with the use of Waitangi Tribunal reports and comments from authors on Māori politics. With the use of these sources and interview material the common themes of land, whakapapa and tribal authority arise. This understanding is contrasted with the way prominent members of TRONT discuss the practice of rangatiratanga; economic independence and the control of assets are considered to be crucial. Ngāi Tahu have attempted to synthesise aspects of liberal democratic principles with

those of indigenous self-determination and this brings in to question the accuracy of the theory discussed in Chapter One.

### *Economic independence and rangatiratanga*

The fourth chapter looks closely at the mechanics of this claim to synthesising aspects of two perspectives that appear to be irreconcilable within theory. Ngāi Tahu's tribal organisation is split into two separate arms, each with a specific purpose. Ngāi Tahu Holdings Incorporated functions as a corporate entity that generates revenue which is fed into Ngāi Tahu Development Incorporated. This arm of TRONT is responsible for the social and cultural development of the iwi. Funding and cultural initiatives are then fed down to the eighteen papatipu rūnaka that Ngāi Tahu comprises of. Interview material indicated that while economic independence had contributed to the rūnaka having increased authority within their rohe, this was not directly associated with exercising rangatiratanga. Furthermore, there was concern that increased revenue had initiated changes in the way internal rūnaka relationships and practices operated. These responses indicate that Ngāi Tahu are still internally working through how to best synthesise aspects of their culture with the structure of the existing state.

### *Theory and political reality*

This thesis has concentrated upon an anomaly between theory and political reality. Whether the theory is inadequate or Ngāi Tahu have undertaken an impossible task depends upon whether Ngāi Tahu are able to sustain their indigenous identity within a state that is structured upon principles of individual equality. If Ngāi Tahu have managed to effectively synthesise aspects of liberal democratic principles with aspects of indigenous self-determination then this would indicate that the theory is inaccurate and requires review. Alternatively, if the position reflected within the theory is correct this would indicate that Ngāi Tahu are not exercising rangatiratanga and have merely become economically independent. This would also indicate that the cultural identity of Ngāi Tahu is threatened by the existing liberal democratic state.

However, it is not possible to make such a definitive comment for two reasons; it is too soon after settlement to make such an assessment and the theoretical framework is ill-equipped for assessing circumstances that have attempted to synthesise aspects of two apparently conflicting perspectives. This thesis proposes that a more conclusive assessment of contemporary Ngāi Tahu rangatiratanga would be possible if the literature further engaged in debate on the compatibility of liberal democratic thought with indigenous self-determination.

## Chapter 1

### **Liberal Democratic Theory and Indigenous Self-determination**

#### Locating the Tension Between the Two Perspectives

There is tension between the principles of liberal democracy and those of indigenous self-determination. This chapter does not attempt to prove that one view is more logically sound than the other; instead it aims to identify the specific aspects of the two positions that clash. Liberal democratic theory values the individual and equal rights of citizens while indigenous self-determination is a claim to rights through being the first inhabitants of a land. This claim to rights as the first inhabitants of a land is also closely tied to indigenous identity. Here there is a clash between two world views; one fixed on ensuring the state promotes equality between citizens and the other claiming special rights based upon their status and identity as the first inhabitants of a land.

Initially, liberals did not engage in debate relating to indigenous self-determination. The liberal debate on culture within the state was silent and simply referred to the state as being “culturally neutral”. This has changed with a new wave of liberals, such as Will Kymlicka, who acknowledges that culture is a vital component of individual autonomy. These liberals attempt to provide for indigenous self-determination even though there appears to be no evidence that the liberal mind has accepted the indigenous basis for this claim. Liberals who are intent on recognising indigenous self-determination do so from the readymade liberal framework that is firmly grounded in the notion that individual equality is a universal good. Kymlicka advocates the provision of specialised rights for indigenous groups in order for their cultural freedom and individual equality to flourish.

This new strand of liberalism engages with indigenous claims far more than its predecessors and therefore potentially has greater ability to appreciate an indigenous world-view. However, Kymlicka endeavours to provide special rights to indigenous groups in order to promote liberal democratic values; individual autonomy, freedom and equality. This fails to recognise the indigenous demand for rights based upon being the first inhabitants of the land. As liberalism only endorses the aspects of the indigenous world view that are compatible with

principles of liberal democracy, this indicates that it would be highly unlikely for indigenous groups to be able to exercise self-determination within the liberal state in a way that enables their rights and identity, as the first inhabitants of the land, to be acknowledged.

This chapter outlines the basis for a claim to indigenous self-determination and also discusses how this is closely related to indigenous identity. Next, the liberal democratic understanding of and provision for indigenous self-determination is discussed. This chapter establishes two points: first, there is a clash between liberal democratic thought and arguments based upon indigenous self-determination within the literature; and secondly, this clash within the theory indicates that the practice of indigenous self-determination in the liberal state is not possible.

### **Indigenous self-determination**

It is necessary to discuss what is meant by indigenous self-determination. This overview does not attempt a comprehensive review of political theory on indigenous rights; instead the aim is to obtain a concise understanding of the aspects of indigenous self-determination that potentially conflicts with liberal democratic principles. A claim to indigenous self-determination is supported with two arguments: the connection between the relationship with the land and indigenous identity; and being the first inhabitants of a land. Both of these arguments are illustrated with examples and discussed in order to show how they provide a basis for a claim to indigenous self-determination. As this thesis later focuses upon specific instances of Māori self-determination within New Zealand, the indigenous understanding of self-determination is primarily based on literature from Māori authors. However, international examples of indigenous self-determination are also discussed.

If referring to Māori indigenous rights Durie uses the terms 'self-determination' and 'tino rangatiratanga' interchangeably: "Tino rangatiratanga has both historical and contemporary meaning. Its English equivalent is contentious but there is a reasonable level of Māori agreement that self-determination conveys the essential meaning of tino (Durie, 2000: 52). This thesis adopts Durie's understanding of rangatiratanga by using it in the same sense as "indigenous self-determination". "Indigenous self-determination" appears to be more commonly used when referring

to international examples; while rangatiratanga specifically refers to Māori in New Zealand. However, both of these terms have the same basic meaning; an indigenous people making a claim to certain rights through their status as the first inhabitants of a land.

Durie continues by stating: “The broad aims of self-determination are the advancement of Māori people as Māori and the protection of the environment for future generations. Economic self-sufficiency, social equity, cultural affirmation, and political power, stand alongside a firm Māori identity strengthened by access to whānau, hapū and iwi and confirmation that future generations of Māori will be able to enjoy their lands and forests, rivers and lakes, harbours and the sea and the air” (Ibid: 239). Durie communicates that a crucial component of tino rangatiratanga is not just being the first inhabitants of a land but also the right to practice Māori cultural identity.

### *Indigenous identity*

The indigenous relationship with the land is closely tied to indigenous identity. The term ‘tangata whenua’ means ‘people of the land’ and aptly captures this connection between indigenous self-determination and identity. Māori claim self-determination as tangata whenua and part of Māori identity is being the tangata whenua of New Zealand. The close tie between the Māori relationship with land and Māori identity manifests as a claim to indigenous self-determination.

The New Zealand Māori Council have also commented upon the connection between the Māori relationship with land and Māori identity: “It [land] provides us with a sense of identity, belonging and continuity. It is proof of our continued existence not only as a people, but as the tangata whenua of this country. It is proof of our tribal and kin group ties” (Kawharu, 1998: 39). Mason Durie explains “A Māori identity is secured by land; it binds human relationships, and in turn people bond with the land. Loss of land is loss of life, or at least loss of that part of life which depends upon the connections between the past and the present and the present with the future.” (Durie, 1998: 115)

There are examples outside of New Zealand that demonstrate this connection between an indigenous relationship to land and indigenous identity. Cree Grand

Chief Mathew Coon Come comments how the extinguishment of Aboriginal title impacts upon indigenous identity:

*Extinguishment attempts to sever our relationship with our lands, undermining our identity and status. It attempts to deny us beneficial enjoyment of our resources, while making others wealthy and us dependent on them for our basic needs. It puts the power to make decisions about our lands and waters, and thus about us, exclusively in the hands of others. Its imposition is thus a profound denial of our fundamental rights.*

*(Grand Council of the Crees, Presentation to the Royal Commission on Aboriginal Peoples, Montreal, Quebec, November 18, 1993. Quoted by Rynard, 2000: 233)*

It is this close connection between the indigenous relationship with the land and indigenous identity that anchors a claim to indigenous self-determination. Guboo Ted Thomas, a tribal elder of the Yuin Tribe on the South Coast of New South Wales, wrote to the Australian Government about the importance of Mumbulla Mountain. Within his explanation of the rights that his people have over the mountain, he referred to instances where Aboriginal culture had mingled with the land.

*I am writing to you about Mumbulla Mountain, which is of vital importance to the culture and dignity of 3,500 Aborigines living on the South Coast today... For us Aborigines, it is a sacred mountain where initiations took place. These took place at sacred sites on the Mountain. When they were old enough, the boys of our tribe were taken away to these special sacred sites. Here they were taught special secrets of our Culture. So you see, the Law comes from the Mountain.*

*They had to spend a long time on the Mountain away from their people, and they were put through special tests to prove they were men. Then they were initiated and brought back to the tribe as young men who respected their Tribal Law and Culture. The Law has been handed down from one generation to the next, ever since the Dreamtime. (Moody, 1988: 389)*

A claim to indigenous self-determination is also an assertion of indigenous identity; the two are inextricably intertwined. The *Te Whānau o Waipareira Report* comments on the relationship between rangatiratanga and Māori identity: “[Tino rangatiratanga] applies to much more than the customary ownership of lands, estates, forests, fisheries and other taonga. It describes a value that is basic to the Māori way of life, that permeates the essence of being Māori.” (Waitangi Tribunal, *Te Whānau o Waipareira Report*, 1998: 26) Although this report does not directly comment upon what the essence of being Māori actually is, these views placed together illustrate that there is a connection between Māori identity and the Māori

relationship with land. This connection manifests in a claim to indigenous self-determination.

Although the above quotations are different in their origin and context there is a common theme that connects them all; a claim to indigenous rights or indigenous self-determination is considered to be more than a political tool used to obtain resources and power. To indigenous people, a claim to indigenous self-determination is also an assertion of indigenous cultural identity. It is particularly this aspect of indigenous self-determination that the liberal school of thought has particular difficulty in accepting. An example of this provided by Richard Mulgan is referred to on page 16.



*First and continued inhabitants of the land*

The second argument that is used to found a claim to indigenous self-determination is that indigenous people were in a land first and have continuously resided upon that land. Mason Durie speaks of prior occupancy when explaining the legal status of Māori. He explains that Māori are:

*...a people with constitutional status arising from prior occupancy... entitled to special recognition... Custom is a source of law for all people. Tikanga Māori or Māori customary law is included, has been here since time immemorial and, in my view, has legal status, even without parliamentary recognition. It is part of the law of the land because it always has been. It grew from out of this earth (Ibid, 1998: 34).*

Durie explains that Māori indigenous status arises not only from being the first inhabitants but also because it has always been this way.

Through indigenous people being the first inhabitants of a land, indigenous rights theorists argue that later forms of established government have no authority over indigenous peoples. James Tully adopts this position and writes from an indigenous

point of view. Tully argues that even when a people have been conquered, the pre-existing legal institutions, laws, and rights of the people remain intact until the conqueror changes the laws and rights of the conquered people under the international convention of 'conquest and continuity'. He explains: "When one civilized nation conquers another, the property and government of the conquered nation continue, under the imperium of the conqueror, unless or until the conqueror expressly discontinues them. If the conqueror recognises them, then the option of discontinuity is extinguished." (Dodds, 1998: 190)

Tully's argument questions the legitimacy of the existing state to preside over indigenous peoples. He believes that an indigenous people that were independent, self-governing, exercising jurisdiction and occupying their lands are considered as meeting the criteria of free peoples and sovereign nations in the law of nations. (Tully, 2000: 52) These peoples are viewed as being no different in legal or political status to the colonising peoples who claimed to establish sovereignty over them.

The focus within this part of Chapter One has been upon the indigenous understanding of self-determination and how this conflicts with principles of liberal democratic thought. This brief discussion of indigenous self-determination has highlighted two main points that potentially conflict with liberal democratic thought. First, the connection between an indigenous relationship with land and indigenous identity and second, being the first and continued inhabitants of a land. Both of these arguments are used to forward a claim to indigenous self-determination. Self-determination itself entails a demand to the state for greater independence from state control on the basis of indigenous status. However, the difficulty with this approach is that it is ideologically based and does not take into account the political reality of the existing liberal democratic state. This aspect of indigenous self-determination is discussed in further detail on page 66 of Chapter Five.

### **Liberal democratic thought**

The basic principles of liberalism concern individual autonomy, social equality and democracy. A liberal democracy's most crucial obligation is to the freedom and equality of its individual citizens. Will Kymlicka describes liberalism as "a political philosophy [which] is often viewed as being primarily concerned with the relationship between the individual and the state, and with limiting state intrusions on the liberties of citizens." (Kymlicka, 1989:1) The New Zealand theorist and political scientist Richard Mulgan writes: "'One person, one vote; one vote, one value' is now recognised as the guiding principle for democratic electoral systems." (Mulgan, 1989:60) He continues by explaining this "implies that each person is of equal value, that each person's interests and opinions should carry equal weight." (Ibid: 63) At the heart of liberal democratic principles is the understanding that everyone should be subject to the same law and thus be treated equally.

The problem here is this "same-law" does not necessarily mean there is equality. Mulgan's understanding of equality does not include any aspect of culture individual equality is considered to be a universal good that provides equal rights for all. He fails to acknowledge that the liberal democratic view of "equality" or "justice" is itself culturally specific and may be quite different to an indigenous view of equality. Andrew Sharp also comments upon this association of individual

equality with justice yet places a further qualification upon it – equality of opportunity. “Equality of opportunity and unequal rewards distributed according to past performance: these, in the Pākehā ideology, constituted justice. Anything else was unequal treatment and favouritism: in a word, injustice.” (Sharp, 1998: 195) Sharp describes the ‘Pākehā ideology’ as believing “the current inequalities in New Zealand were by and large justified. People merited and deserved what they had in fact differentially got.” (ibid) This ideology assumes that equality of opportunity exists and rewards are not distributed according to “family wealth, neighbourhood connections, good parenting and so on. The Pākehā ideology held that equality of opportunity did indeed exist, so that those who prospered, prospered deservedly and those who languished deserved what they did not get.” (ibid) The difficulty with this ideology is that it assumes that the state provides equal opportunities for all citizens, irrespective of their culture.

#### *The liberal state is neutral to culture*

There is a body of work within liberal democratic theory that supports the view that the state should be neutral to culture. Michael Walzer believes the state should be neutral to the ethno-cultural identities of its citizens, as culture is for people to pursue in their private life but it is no concern of the state. Walzer thinks the state should respond to minority groups by refusing "to endorse or to support their ways of life or to take an active interest in their social reproduction" and being "neutral with reference to language, history, literature, calendar." (Walzer, 1992:100) The state treats all citizens alike irrespective of their origin or culture. Similarly, Sharp writes of this “neutral state” position. He maintains that differentiation cannot be made on the basis of race, as this would be unjust: “In sum, the idea was that not only should everyone be subject to the same authorities who should make and administer the law, but the precise laws that governed Māori and Pākehā should not differ on grounds of Māori and Pākehā differences – or on the grounds that Māori had separate rights.” (Sharp, 1997: 197) This position highlights the main flaw within liberalism – it assumes that it is representative of all, and that all individuals are grounded in the same social or cultural identity.

If this strand of liberalism does provide special rights for indigenous groups it is done in order to enhance equality between citizens, not to acknowledge that rights arise from their status as first inhabitants of a land. This effectively equates the

indigenous cultural identity with social disadvantage. Richard Mulgan illustrates this position well:

*To argue that aboriginal status justifies special privileges, such as superior rights or positive discrimination in social welfare, leads to implications that most people find morally unacceptable...The key point is the basis on which special protection or privileges are justified. They are justifiable for groups whose rights are threatened. Aboriginal minorities are a group of such threatened minorities whose rights are properly accorded with special protection. But the ground for protection is not that they are aboriginal but that they are disadvantaged. If the disadvantage is removed so is the entitlement for special treatment" (Mulgan, 1989: 84-85)*

By allocating special rights for indigenous groups on the basis of alleviating social inequality, Mulgan demonstrates that the liberal perception of indigenous self-determination is grounded in the pursuit of social equality. He further states: "The concept of indigenusness refers simply to the origins of a people and the time they and their ancestors have occupied a particular territory... the international movement would be better advised to claim rights for disadvantaged aboriginal minorities rather than for all aboriginal peoples." (Mulgan: 86) This position denies a fundamental aspect of rangatiratanga – indigenous identity as the first inhabitants of a land.

Andrew Sharp also dismisses reasoning that is not based on liberal principles: "[A]rguments derived from specifically Māori understandings of the issues (namely arguments from the Treaty of Waitangi and tangata whenua status) are intellectually and therefore morally wrong." (Sharp, 1995: 120) He writes further "You cannot use an argument that depends on commitment to culturally specific beliefs on someone who does not belong to that culture." (ibid: 122) This view is indicative of the liberal tendency not to engage with other cultural perspectives. An indigenous claim to self-determination only registers with the liberal mind if it is a means to alleviate inequality within society. Claims to having special rights through a long-standing relationship to the land are not based upon enhancing individual autonomy and are therefore dismissed as "non-liberal" and therefore "immoral". Although liberals may accept that part of an indigenous claim is based upon being the first inhabitants of a land, this is not considered to give the claim any authority. Furthermore, this strand of liberalism is indifferent to culture and does not acknowledge that indigenous identity is closely intertwined with a claim to self-determination.

*The liberal state is not neutral to culture*

Will Kymlicka breaks away from this school of thought by acknowledging that the state is not blind to culture. He believes that minority cultures need protection from the economic and political decisions of the dominant culture through the provision of special rights. Without this protection, the freedom of choice for cultural minorities is determined by a different culture. Kymlicka argues that liberal democracies promote a 'societal culture' through their institutions and their official recognition of language.

*Government decisions on language, internal boundaries, public holidays and state symbols unavoidably involve recognising, accommodating and supporting the needs and identities of particular ethnic and national groups. The state unavoidably promotes certain cultural identities, and thereby disadvantages others. (Kymlicka, 1995: 108)*

Kymlicka advocates the use of specialised rights, including self-governance measures, for cultural minorities in order to ensure their cultural freedom. (Kymlicka, 1995: 126) He assumes that minorities will exercise these rights in a way that is acceptable to the majority.

*Territorial autonomy, veto powers, guaranteed representation in central institutions, land claims and language rights can help rectify this disadvantage, by alleviating the vulnerability of minority cultures to majority decisions. These external protections ensure that members of the minority have the same opportunity to live and work in their own culture as members of the majority. (Kymlicka, 1995:109)*

The point of contention between the two different perspectives is the source of these special rights. The reason Kymlicka gives for providing these specialised rights is due to his belief that cultural membership as a 'primary good', as it is necessary to a person's essential interest in living 'a good life'. His notion of a 'primary good' and living 'a good life' is based upon the work of John Rawls. Rawls considers social liberty to be a primary good as self-respect is maintained by the individual arriving at his or her own understanding of the good. He argues that our essential interests are harmed by attempts to enforce a particular view of the good life and believes that the ability to examine and revise our understandings is a vital component to leading this good life. (Rawls, 1974: 641)

Kymlicka adopts Rawls' emphasis on the importance of cultural membership by treating it as a vital component to individual freedom; a person's cultural background is seen to provide an essential framework for examining perceptions. Kymlicka refers to Rawls to explain: "In deciding how to lead our lives, we do not start *de novo*, but rather we examine 'definite ideals and forms of life that have been developed and tested by innumerable individuals, sometimes for generations.' " (Kymlicka, 1989:164, quoting Rawls 563-4). Kymlicka believes that cultural membership is closely related to self-identity because it "provides an anchor for peoples' self-identification and the safety of effortless secure belonging. But this in turn means that peoples' self-respect is bound up with the esteem which their national group is held. If a culture is not generally respected then the dignity and self-respect of its members will also be threatened." (Kymlicka, 1995:89) As Kymlicka values cultural membership, it could be assumed that this would serve to assist the acknowledgement of indigenous rights within the liberal democratic state. However, this is not the case. Kymlicka's approach is limited by its very nature; he wishes to acknowledge the value of cultural membership only to promote liberal democratic values. He comments: "Liberals can only endorse minority rights in so far that they are consistent with respect for the freedom or autonomy of individuals." (Kymlicka, 1995: 75) Kymlicka values cultural membership but only if it is compatible with liberal democratic principles. This would result in indigenous groups being allocated rights because they are disadvantaged by the dominant state culture; this fails to acknowledge their identity as first inhabitants of a land.

This defeats the main purpose of Kymlicka's argument; he attempts to extend liberalism to acknowledge the importance of cultural identity to individuals but in doing this he is restricted by the very framework he attempts to extend. Despite Kymlicka's endeavours to provide for other cultures within the liberal tradition, he still demonstrates the liberal inability to accept rights that do not promote individual autonomy. He classifies indigenous people within the category of 'national minorities'.

National minorities are distinguished from 'ethnic groups' as minorities that "typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies." Ethnic groups are immigrants that "typically wish to integrate into the larger society, and to be accepted as full members of it."

(Kymlicka, 1995: 11) Kymlicka believes there should be no distinction between indigenous peoples and national minorities:

*On what basis can we say that indigenous peoples have a stronger claim to self-determination than other national minorities? ...Why indeed do we need to single out indigenous peoples at all under international law? Why not simply include indigenous peoples under the broader category of national minorities, and assert that all national minorities have rights of self-determination? (Kymlicka, 2001: 125)*

This thesis argues that a reason not to “include indigenous peoples under the broader category of national minorities, and assert that all national minorities have rights of self-determination” is that this fails to recognise indigenous cultural identity. This also defeats Kymlicka’s aim of acknowledging the importance of cultural identity to the liberal state. As discussed earlier in the chapter, Kymlicka believes that cultural membership is closely related to self-identity because it “provides an anchor for peoples’ self-identification and the safety of effortless secure belonging and this means that peoples’ self-respect is bound up with the esteem which their national group is held.” He also states “If a culture is not generally respected then the dignity and self-respect of its members will also be threatened.” (Kymlicka, 1995:89) It seems clear that the measures Kymlicka advocates for indigenous groups within the liberal democratic state do not recognise indigenous cultural identity and therefore, he fails on his own terms to protect the dignity and self-respect of indigenous groups. The main weakness within his argument is the failure to realise that part of cultural identity may relate to principles that are not recognised by the liberal democratic state. Although Kymlicka recognises that culture is important to the individual, this is done from a purely liberal democratic position.

It is argued here that one culture cannot adequately provide for another if there is a clash of values. The only difference between Kymlicka and other liberals is that he takes steps towards acknowledging the importance of culture within the liberal democratic state. This is liberalism with a cultural conscience; Kymlicka attempts to engage with other cultures but does so on strictly liberal terms. He may advocate for the provision of special rights for indigenous groups but these rights are not based upon the indigenous understanding of self-determination. The problem with liberal democracy providing for cultural values is that it only recognises the aspects of a culture that is favourable to its own value systems.

### **Indigenous self-determination operating within the liberal democratic state**

It is this feature of liberalism that indicates the practice of indigenous self-determination within the liberal democratic state would not be possible. Bhiku Parekh focuses upon this flaw within liberal reasoning. Parekh deems all liberal views to have the flaw of “absolutising” liberalism by using it as a “central frame of reference” and “dividing all ways of life into liberal and non-liberal.” Parekh points out that the danger within the liberal treatment of culture is its inability to appreciate “cultural otherness”. The alternative to this, Parekh suggests, involves indigenous cultures adopting aspects of western culture that they wish to include within their own culture. This is discussed in further detail with reference to Ngāi Tahu in Chapter Five.

He considers Kymlicka’s theory to be a form of majority tyranny: “[T]he only reason for asking non-liberals to respect these (liberal principles) is that they represent the beliefs and values of the majority, a form of moral positivism that violates their integrity and makes a falsely homogenised majority the arbiter of moral values.” (Parekh, 2000: 105) Comment from Jeremy Waldron indicates that Parekh is correct in his view that liberalism is insistent on “equality” as this ensures the predominance of the majority. An underlying reason for liberal opposition to indigenous self-determination could be attributed to the desire to maintain the status-quo. Waldron states: “Quite apart from the inherent *creepiness* of its [indigeneity] underlying legitimism, there are considerable dangers in exposing the modern distributions of power and property to the arcane details of recondite historical and prehistorical inquiry.” (Waldron, 2003: 80)

Kymlicka’s provision for indigenous self-determination is a watered down liberally digestible version of self-determination that is quite distinct from the indigenous understanding. This means indigenous groups may have special rights but these rights do not stem from a claim to being the first inhabitants of a land and therefore do not recognise indigenous identity.

This chapter has identified that liberal theorists only recognise rights that promote individual equality. This indicates that it is impossible for the liberal democratic state to provide for indigenous self-determination that recognises indigenous rights based upon being the first inhabitants of a land. If liberals attempt to make



provision for indigenous self-determination, the result is that these measures are made available for only those aspects of indigenous self-determination that are compatible with liberal democratic principles. Liberalism shapes indigenous self-determination to slot into the existing state framework. Although this may work to establish an “equal” and cohesive liberal democratic state, it does not recognise the basis for a claim to indigenous self-determination. The next chapter places this theory within some context by drawing upon specific examples within the Ngāi Tahu settlement.

## Conclusion

This chapter has established two main points: that there is a clash between indigenous self-determination and liberal democratic principles; and this tension within the theory indicates that the practice indigenous self-determination within a liberal democratic state would not be possible. Indigenous groups claim rights on the basis that they arrived in a land first and that there is a connection between their relationship with the land and their identity. These two arguments form the basis of a claim to indigenous self-determination. This position conflicts with the fundamental aspects of liberal democratic thought. Liberals envisage a society where everyone has the same bundle of rights and everyone has the same opportunities and abilities to succeed or fail. Aspects of indigenous culture are only recognised by the liberal democratic state as long as they are compatible with the principles of liberal democracy.

This chapter has looked at how liberal democratic theory provides for indigenous self-determination. Initially, liberal democratic theory was silent on the place of culture within the state. Theorists such as Waltzer consider state institutions to be blind to all culture and that equal opportunities are provided to all citizens, irrespective of their cultural affiliation. The debate has progressed from here and a new wave of liberals have rethought this position. Amongst these is Will Kymlicka, who acknowledges that the state is not blind to culture and its bias has the potential to disadvantage cultural minorities.

Kymlicka includes indigenous groups within his classification “cultural minorities” and claims that these groups should have specialised rights in order to balance up the scales and provide all citizens with equal opportunities. In a nutshell, Kymlicka

is an advocate of affirmative action. The problem with this idea is that it balances up the scale from a liberal perspective, without considering the indigenous one. This may provide indigenous groups with greater opportunities within the liberal democratic state but it still does nothing to acknowledge indigenous identity. This is ironic when a main facet of Kymlicka's work concerns recognising the cultural identity of citizens in order to promote their individual autonomy.

Waltzer is not particularly concerned with special rights for indigenous groups. In his view they are free to do as they please in their own spheres as it is not a concern of the state to either recognise their claims to special status or to provide for them. Kymlicka is more pro-active; he retains his liberal democratic beliefs while attempting to provide for indigenous culture, and this creates difficulty. Kymlicka boldly attempts to provide for indigenous culture without first acknowledging the basis of indigenous rights.

Providing specialised rights to indigenous groups on the basis of promoting individual autonomy may carve out a niche for indigenous groups to operate within the state without direct disadvantage but this does not function to recognise indigenous identity as the first inhabitants of a land. Bhiku Parekh argues that Kymlicka has no ability to appreciate "cultural otherness" and is flawed through using Western thought as a central frame of reference. Kymlicka's theory provides an incentive for indigenous groups to move away from their indigenous identity and become more fluid within the framework of the liberal democratic state. The following chapter places this theory within context by referring to cultural redress provisions within the Ngāi Tahu settlement.

## Chapter 2

### **Cultural Redress within the Ngāi Tahu Settlement**

#### Exploring the Limitations of the Liberal Democratic State

The last chapter focused upon the tension within the theory between liberal democratic principles and indigenous self-determination. This chapter places this theoretical position within context by drawing upon specific redress examples within the Ngāi Tahu settlement. It demonstrates the inability of the liberal democratic state to provide for rights that are based upon a people being the first inhabitants of a land. Three separate provisions within cultural redress are discussed: the statutory vesting of Lake Waihora; the statutory acknowledgement over Lake Wairewa; and provision of nohoanga on the Rakaia River. These examples suggest that the theory discussed in chapter one reflects political reality; the tension between indigenous rights and liberal democratic thought makes the practice of indigenous self-determination within the liberal democratic state not possible.

Before this chapter can draw upon examples from Ngāi Tahu cultural redress and compare them to aspects of liberal democratic theory, it is necessary to make some distinction between the theory of Will Kymlicka and cultural redress provisions within the Ngāi Tahu Settlement. Kymlicka awards rights to indigenous groups in order to ameliorate the cultural bias of the state but does so without acknowledging indigenous identity. Cultural redress does acknowledge Ngāi Tahu cultural identity as tangata whenua; however, the existing legal framework that ensures all citizens within New Zealand have the same rights mitigates the implementation of this recognition. Although slightly different, both of these approaches attempt to provide for indigenous culture within the liberal democratic state but are prevented by the inherent conflict between liberal democratic principles and indigenous rights.

Cultural redress aims to “recognise claimants’ spiritual, cultural, historical or traditional associations with the natural environment and their mana within their rohe”. (Office of Treaty Settlements, 2003: 81). Provisions within cultural redress are discussed and illustrated with interview material. It is argued cultural redress mechanisms attempt to acknowledge Ngāi Tahu culture by using the tools of the existing liberal democratic state and are therefore unable to give practical

recognition to rights that do not promote individual equality. This means cultural redress mechanisms may acknowledge that Ngāi Tahu have “a special relationship” with natural resources but the iwi does not have authority over them.

### **The Ngāi Tahu Settlement**

For the Crown, the aim of negotiating with Ngāi Tahu was to reach a settlement that: removed a sense of grievance; was a fair, comprehensive, final and durable settlement of all Ngāi Tahu historical claims; and provided a foundation for a new and continuing relationship between the Crown and Ngāi Tahu. For Ngāi Tahu the settlement concerned the restoration of their rangatiratanga. The Ngāi Tahu magazine, *Te Karaka*, stated “The Crown’s Settlement Offer presents a unique opportunity for Ngāi Tahu to reassert its rangatiratanga over a range of very significant sites by regaining control over their management.” (Ngāi Tahu Negotiating Group, 1997: 30)

The basis of the Ngāi Tahu claim was that land sales had left the tribe with insufficient money, land and resources to enable them to engage properly in the new developing pastoral and commercial economy. The claim was nine major claims united into a single claim and involved the majority of the South Island. It concerned the Crown purchases of land, at extraordinary low prices, between the years 1844 to 1864. During this period over 34.6 million acres of land was purchased. (Alves, 1999: 13) The Waitangi Tribunal recommended that the Ngāi Tahu claim required negotiation between the iwi and the Crown on the basis that Ngāi Tahu had been deprived of sufficient land to provide an economic base for the tribe. (Waitangi Tribunal, 1991: 826-827) The result of these negotiations with the Crown was the Deed of Settlement – signed at Takahanga Marae, Kaikoura on 21 November 1997. For Ngāi Tahu the settlement offered \$170 million, various cultural redress options and a Crown apology.<sup>8</sup> The Ngāi Tahu people ratified this offer through postal ballot and The Ngāi Tahu Claims Settlement Bill became law

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<sup>8</sup> The apology to Ngāi Tahu the Crown recognised that it “failed to act towards Ngāi Tahu reasonably and with the utmost good faith, consistent with the honour of the Crown” and acknowledges that there was a failure to “preserve and protect” Ngāi Tahu’s use and ownership of their land. The Ngāi Tahu Negotiating Group agrees with the Crown’s understanding of the apology. They have stated that one of the most important aspects of the Crown’s Settlement offer is the formal apology. “The Crown will include a formal apology as part of the Deed of Settlement and the Settlement Legislation to acknowledge that Ngāi Tahu has suffered grave injustices which significantly impaired its economic, social and cultural development.” (Ngāi Tahu Negotiating Group, 1997: 15)

on 29 September 1998.<sup>9</sup> This chapter argues that although the Crown may acknowledge the importance of the Ngāi Tahu relationship to land, there is limited scope for this relationship to be given practical recognition within the liberal democratic state.

### *Cultural Redress*

Cultural redress provisions walk the fine line of attempting to recognise the Ngāi Tahu cultural relationship with the land while ensuring the rights of other citizens are not affected. Cultural redress aims to recognise claimants' spiritual, cultural, historical or traditional associations with the natural environment and their mana within their rohe. (Office of Treaty Settlements: 81). It is argued that this cannot be effectively done within a liberal democratic framework, as a fundamental aspect of Ngāi Tahu's "spiritual cultural, historical or traditional associations with the natural environment" is being able to exercise tribal authority over these resources. Here lies the clash between indigenous self-determination and the liberal democratic state.

The Crown acknowledges the issue of having authority over natural resources causes tension between Māori interests and wider public concerns. There is concern that if there is exclusive ownership of a "national resource" then the individual rights and freedoms of all citizens may be denied if they are not able to have access to the resource. The Crown states: "Under common statute law, claiming ownership implies exclusive possession with the right to prevent others from using the resource. This is a concept that raises many practical and legal difficulties with waterways." (ibid: 110) The Crown attempts to curtail this tension by focusing on the 'interests' of claimants, rather than their 'position' in negotiations. "Experience in settlement negotiations so far indicates that faster and more effective progress can be made if the parties clearly communicate the *interests*

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<sup>9</sup> The offer also included the return of Aoraki. The Settlement Offer included the return of Aoraki (Mount Cook) to Ngāi Tahu. This gesture was considered to recognise the tribe's mana over the area and their special relationship with the mountain. (Te Karaka, 16) In return, Ngāi Tahu agreed to gift the title of the mountain to the nation. The Crown explains that the claimants agree to "freely and without condition give the site back to the Crown, on behalf of all New Zealanders, so the site may keep its current status." (OTS:122) The Ngāi Tahu Negotiating Group stated: "The very act of gifting the mountain to the people of New Zealand confirms that the person making the gift has the mana, or power, to do so." (ibid) The Crown recognises "the level of Māori interest in the area, and Māori mana arising from it by restoring to Māori the sense of original "custodianship" of the site." (Office of Treaty Settlements: 122).

they wish to protect and promote, rather than stating redress *positions* at the outset.” (ibid: 97) This involves looking at the reasons that lie behind an initial statement of negotiating position. *Healing the Past, Building a Future* explains:

*In their first approach to a particular site with strong cultural association, claimant groups may be seeking ownership while the Crown is reluctant to transfer ownership. After discussions about their respective interests in the site, it might become clear that the claimant group's main concern is to protect tūāhu (place(s) of worship) on part of the site, while the Crown wants to maintain public access for recreation on the rest of the site. (Office of Treaty Settlements: 97)*

By focusing on ‘interests’ as opposed to ‘positions’ an attempt is made to accommodate Ngāi Tahu interests as much as possible within the limitations of the existing legal framework. This approach can be compared with Kymlicka’s view of minority rights. As discussed in Chapter one, he agrees that minority rights should be provided for insofar as they are compatible with liberal democratic principles. Settlement redress provides for the needs of claimant groups insofar as they are compatible with the existing legal structure.

#### *Cultural redress and liberal democratic theory*

Cultural redress mechanisms are similar to Kymlicka’s position discussed in Chapter One. Although it is acknowledged that Ngāi Tahu have a special relationship with the land as tangata whenua, there is no provision of special rights in order for this relationship to be exercised. Cultural redress provisions increase Ngāi Tahu involvement within the existing legal framework but they do not provide for the iwi to have authority over resources. This chapter argues that like Kymlicka’s theory, cultural redress provisions for Ngāi Tahu illustrate the difficulty the liberal democratic state has in providing for indigenous self-determination. The remainder of this chapter develops this argument through examining three specific provisions within Ngāi Tahu cultural redress and illustrating them with interview material from Ngāi Tahu papatipu rūnaka representatives.

## Examples of Cultural Redress

### *Example one: Lake Te Waihora*

The example of cultural redress provision for Lake Waihora illustrates that the Crown has a clear understanding of Ngāi Tahu culture and beliefs but does not have the legal flexibility to give practical recognition to this. Lake Te Waihora was transferred to Ngāi Tahu in the settlement under the cultural redress mechanism of “statutory vesting”. The water was not transferred but the lakebed was vested in Ngāi Tahu and managed under a joint management plan with TRONT and the Department of Conservation (DoC), with DoC retaining a significant management role.

The Crown acknowledges that there are significant cultural values that underpin Māori claims to ownership of resources: “From Waitangi Tribunal reports, other publications and negotiations to date, the Crown understands that to a claimant group rivers and lakes can represent any or all of the following: the embodiment of ancestors; a key aspect of tribal and personal identity;... possessors of mauri, the life force or essence that binds the physical; and spiritual elements of things together.” (Office of Treaty Settlements: 110)

The Crown also acknowledges that the Māori understanding of authority over a lake differs from the common law position: “The Crown acknowledges that Māori have traditionally viewed a river or a lake as a single entity, and have not separated it into bed, banks and water. As a result, Māori consider that the river or lake as a whole can be owned by iwi or hapū, in the sense of having tribal authority over it.” (Ibid) Here lies the main difference between cultural redress mechanisms and the work of Kymlicka; settlement policy clearly acknowledges the identity of Ngāi Tahu and their relationship to the land but the existing legal structure provides limited capacity for this relationship to be put into practice. Whereas, Kymlicka awards special rights to indigenous groups in order to diminish the cultural bias of the state but does so without acknowledging indigenous identity.

The Crown explains why it can not provide for Ngāi Tahu ownership of Lake Te Waihora. “[U]nder New Zealand law the banks and bed of a river can be legally owned, the water cannot. This reflects the common law position that water, until contained (for example, put in a tank or bottled), cannot be owned by anybody. For this reason, it is not possible for the Crown to offer claimant groups legal ownership

of an entire river or lake – including the water – in a settlement.” (Office of Treaty Settlements: 111) Instead of ownership of the entire lake, the lakebed was vested in Ngāi Tahu and a joint management plan has been established between Ngāi Tahu and the Department of Conservation.

The Taumutu rūnaka representative considered this provision did not provide the rūnaka with any authority over the lake. In particular she commented upon the restrictions associated with the joint management plan and the inability of the rūnaka to address issues relating to the water within the lake. “Waihora is a joint management plan with DoC so that is with the government. If the rūnanga says ‘No discharge into Waihora’, the DoC and Ngāi Tahu management plan is going to have to say something a lot softer than that or it will conflict with other government departments.” (Confidential interview: 2001, October 18) The Taumutu representative considers that the vesting of only the lakebed and not the water restricts the rūnaka’s involvement: “This DoC and Ngāi Tahu joint management of Waihora can only deal with land issues, not water issues. It has tied our hands.” (Ibid) In particular, the rūnaka cannot prevent environmental damage of the tributaries that feed into the lake. One main concern is farmers who clean out their drains and harm eels.

*They [the drains] go into Waihora. If you call something a drain then you can do a lot more to it than you can a stream – environmentally. A lot of them have been realigned so they look like drains. There is not one dam drain in this area. They are all streams and creeks, there is not one true drain. Our fishermen, one year cleaned out the back one, they were pulling out baby eels thousands upon thousands. We couldn’t save them. They just buried them. Wrong time of the year to be cleaning. We are hoping that in the meeting [with local council] we will address next years cleaning. (Ibid)*

Although statutory vesting of the riverbed was intended to “meet the interests and objectives of the claimant group through involvement in the management or decision-making.” (Office of Treaty Settlements: 112.) The papatipu rūnaka representative at Taumutu does not believe this has happened, as the rūnaka has no authority over Lake Waihora. The authority of the rūnaka has been restricted by the lakebed being jointly managed with DoC and the water itself not being transferred. This example illustrates that even though the Crown has a clear understanding of the cultural significance natural resources have to Ngāi Tahu, the legal framework does not have the flexibility to enable Ngāi Tahu to have authority over these natural resources. This suggests that the theory posited in chapter one reflects political reality; the tension between liberal democratic principles and the



indigenous understanding of self-determination makes it difficult for indigenous self-determination to be practiced within the liberal democratic state.

*Example two: Lake Wairewa*

Within Ngāi Tahu cultural redress the Crown also aims to give visible recognition to Ngāi Tahu mana within their rohe. Four instruments have been created to recognise the mana of Ngāi Tahu: statutory acknowledgments; deeds of recognition;<sup>10</sup> töpuni;<sup>11</sup> and dual place names.<sup>12</sup> The Statutory Acknowledgment over Lake Wairewa is discussed as an example of ‘mana recognition’.

Sixty-four sites throughout the South Island have been recognised as being culturally significant to Ngāi Tahu and have therefore been given statutory acknowledgment; Lake Wairewa is one of these. Statutory acknowledgments aim to improve the effectiveness of Ngāi Tahu’s participation under the Resource Management Act. These areas are required to be acknowledged on district and regional plans as well as on policy statements prepared by local councils. Statutory Acknowledgments strengthen the notification provisions under the Resource Management Act.<sup>13</sup> Anyone applying for a resource consent that concerns a Statutory Acknowledgment area, or the area around it, is required to notify TRONT.

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<sup>10</sup> Deeds of recognition apply to the same areas as statutory acknowledgments. They give Ngāi Tahu the ability to have input into the decision-making processes with the Crown body responsible for the administration of the specified areas. The Department of Conservation is required to consult with Ngāi Tahu and have regard to their views.

<sup>11</sup> An “Overlay Classification” or “Töpuni” cover areas of land that hold particular cultural significance to Ngāi Tahu. Töpuni were created over fourteen sites within the South Island. Conservation Boards are required to have particular regard to Ngāi Tahu values in relation to each area and consult with the iwi before plans are prepared. The Crown states that a töpuni; “acknowledges the claimant’s spiritual, cultural, historical and traditional values in respect of a site, maintains existing status [and] the Department of Conservation must consult in agreed ways” (Office of Treaty Settlements: 126)

<sup>12</sup> The recognition of Māori place names within Te Waipounamu is also a component of the recognition of Ngāi Tahu’s mana. The Crown’s Settlement Offer provides for 88 place names to be changed. These new names will be included on official maps and road signs. The names will be printed in English/Māori except for Aoraki/Mt Cook, where the Māori name will come first. (Ngāi Tahu Negotiating Group: 25)

<sup>13</sup> If a Statutory Acknowledgment has been made a Deed of Recognition may also be included. This is likely to happen if a Statutory Acknowledgment covers an area that the Crown is responsible for managing.

Crown policy clearly acknowledges the importance of natural resources to Ngāi Tahu cultural identity: “claimant groups will often seek redress for sites of special significance because of their spiritual, cultural, historical or traditional associations. They may be sites of former pā or marae, urupā, battlegrounds or traditional camping or gathering sites. Maunga (mountains) especially the peaks, often have special significance for tribal identity as the embodiment of tūpuna.” (Office of Treaty Settlements: 108) However, a Statutory Acknowledgment simply reinforces consultation with iwi through the Resource Management Act. Ngāi Tahu have no authority to prevent a resource consent from being granted if the local authority wishes to proceed unless they choose to litigate in the Environment Court.

The Wairewa representative considered that there were positive aspects to having a Statutory Acknowledgment over the lake however he described this as “too little too late”. (Confidential interview: 2001, October 10 a) He explained that there have been problems for a long time with the lake and this was related to the rūnaka not being involved in any decision-making over the management of the lake in the past. He was not confident that the lake being made a statutory acknowledgment would resolve these long-standing environmental issues:

*Even the Pākehā have been complaining about the lake for a while because they lose stock when stock drink the water there. They lose dogs when dogs drink the water there. They lose a lot of money. This was brought up in the 50s. It was probably brought up by the people before then even.*

*There was a train running then so the willows had to be sprayed, or so they said, with that 245T stuff. Then the cockies started to aerial top dress, when it rained the hills are so steep it just washed straight down. Then they built roads and took away the wetlands because the road went through the wetlands. So the filters to stop the stuff coming in off the hills, there was nothing there so it just floats straight into the lake.*

*Everybody just thought “There is lots of water out there that will take care of it.” They open the lake two or three times a year to flush itself out but all that sediment was building up on the bed. When they let the lake out, the top layer would go and the rest of it was still there and it is still there. I don’t see how a statutory acknowledgement is going to change any of this. (Ibid)*

Having a statutory acknowledgment over the lake has not provided the rūnaka with the authority to address longstanding concerns with its management. Due to the pollution of the lake the rūnaka is limited to taking six eels a day. The

representative stated that the condition of the lake has caused many people to move away from the area.

*The people have moved away, there is only one family living at Wairewa now. They are all spread out. There are 8,000 Irakehu people but there are only four at Wairewa now. That is because the lake started to die. Restrictions came in to the way we were able to take food from that lake.*

*We are limited to six eels a day. We are fined if we take more than six. All the other rūnanga on the peninsular are able to go to the lake and take six eels. What we want to be able to do what we used to be able to do - go into that lake and take enough for everybody then take it around to everybody. We are not allowed to do that now. (Ibid)*

The experience of the Wairewa rūnaka indicates that having a statutory acknowledgment over the lake does not enable the rūnaka to address the issues of real concern. They have no control over the water in the lake. Having a statutory acknowledgment provision means the rūnaka are included in decision-making that may influence the management of the lake but they have no authority to prevent the lake being polluted, or to introduce plans to restore the wellbeing of the lake. Although cultural redress provisions acknowledge that Ngāi Tahu have a special relationship with natural resources within their area, these mechanisms do not provide adequate flexibility for Ngāi Tahu rūnaka to actively exercise this relationship.

#### *Example three: nohoanga on the Rakaia River*

Another component within Ngāi Tahu cultural redress concerns mahinga kai, Ngāi Tahu's interests in traditional food and the places where those resources are obtained.<sup>14</sup> The Ngāi Tahu settlement provided 72 nohoanga (camping entitlements) for food gathering purposes. Nohoanga is a traditional concept that has been given a contemporary application within the settlement offer. The traditional concept referred to: "the seasonal occupation sites which were an integral part of the mobile lifestyle of our tipuna." (Ngāi Tahu Negotiating Group: 37) Nohoanga enable iwi to have access to food resources during seasonal periods through exclusive camping rights that are available on Crown land for a fixed period of time each year. These

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<sup>14</sup> Ngāi Tahu define mahinga kai as: "Ngāi Tahu's interests in traditional food and other natural resources and the places where those resources are obtained." (Ngāi Tahu Negotiating Group, 1997: 37)

food-gathering sites do not create any new or increased right to fish or hunt, nor do they prevent public access to the resource. (Office of Treaty Settlements: 130-131)

There are only two nohoanga within the Canterbury region and both located alongside the Rakaia River. One rŭnaka representative did not have nohoanga within his rohe but had heard of experiences of those rŭnaka around the Rakaia River:

*I know that they don't go there and fish very often. One of those sites is right near a camping ground. You look bloody silly sitting in a field for a couple of days when there is a camping ground next door with hot showers and cooking facilities. I know that they have used the nohoanga to stop pollution. One of those jet boat companies was pumping sewage into the river and they used the nohoanga to make them stop it. I don't think they fish there that much though. (Confidential interview: 2001, October 10 b)*

The representative from Taumutu considered that nohoanga had provided few benefits for the rŭnaka: "Nohoanga sites are all very good but you have got to be able to develop them. The nohoanga site over here is covered in gorse and broom. The access is bloody difficult. One of the nohoanga sites they gave us on the Rakaia was actually in the middle of the river. It has now been shifted." (Confidential interview: 2001, October 18)

Nohoanga are another example of attempting to provide for Ngāi Tahu culture and their relationship to the land but this provision is limited by the existing legal framework. The Ngāi Tahu publication, *Te Karaka*, states: "Nohoanga will provide all of Ngāi Tahu with an opportunity to experience the landscape as their tŭpuna did, and to rekindle the traditional practices of gathering food and other natural resources, so long an essential part of Ngāi Tahu culture." (Ngāi Tahu Negotiating Group: 39) However, the nohoanga within the settlement are significantly different from the nohoanga of Ngāi Tahu tŭpuna: they are only accessible for 210 days a year in between the months of August and April; they are "subject to all legislation, bylaws and regulations, and land and water management practices such as weed, pest and river control"; and "issued on a ten year basis and automatically renewed, provided that users leave the sites in a good and tidy condition after use." (Ibid)

Cultural redress acknowledges that it is important for Ngāi Tahu culture to have access to traditional food gathering methods, however, the way these are carried out is limited by laws that ensure all New Zealanders have the same rights. Interview

material from those rūnaka representatives that had used nohoanga saw little benefit in having these sites if they conferred no authority. The main point mentioned by members was that these sites seemed largely redundant as Ngāi Tahu people could go fishing without any Crown provision for nohoanga sites. This example illustrates the same point made by the previous two examples. The intention of the Crown is to recognise that Ngāi Tahu have a special relationship with the land, as this is an important part of Ngāi Tahu culture. However, the scope for enabling this special relationship to be practiced is prevented from operating by a legal framework that promotes individual equality between citizens.

Unlike Kymlicka, cultural redress provisions acknowledge that Ngāi Tahu have a special relationship to land that is closely related to their culture. However, the liberal democratic state does not have the flexibility to enable this relationship to come to fruition. Just as the liberal framework restricts Kymlicka, the wider liberal democratic legal framework restricts cultural redress provisions. This position has been illustrated with the discussion of cultural redress provisions for Lake Wairewa, Lake Waihora, and nohoanga on the Rakaia River. Both Kymlicka's theory in relation to indigenous self-determination and cultural redress provisions for the Ngāi Tahu relationship with natural resources are restricted by their liberal democratic foundations.

### **Conclusion:**

This chapter has placed the theory discussed in Chapter One within context by focusing on cultural redress provisions within the Ngāi Tahu settlement. Chapter One looked at the conflict between a claim to indigenous self-determination and the principles of liberal democracy. This chapter has established that the position within the literature reflects political reality as the liberal democratic state does not enable Ngāi Tahu rangatiratanga to be practiced. This has been demonstrated with reference to specific redress mechanisms within the Ngāi Tahu settlement.

Cultural redress provisions within the Ngāi Tahu Settlement strike the same obstacle that Kymlicka hits when attempting to provide for indigenous culture. Kymlicka's work attempts to provide for indigenous self-determination within the liberal democratic state but this is prevented from happening due to the limitations of liberal principles. As liberals can only recognise rights that promote individual

autonomy, indigenous rights that are based on a claim to being the first inhabitants of a land simply do not register. Cultural redress mechanisms provide for the Ngāi Tahu relationship to land insofar as the existing legal structure permits. This chapter argues that although the Crown acknowledges the importance of the Ngāi Tahu relationship to land, there is limited scope for this relationship to be practiced within the liberal democratic state. Examples from Ngāi Tahu papatipu rūnaka indicate that two opposing sets of rights are not able to operate within the same context and due to this clash cultural redress provisions do not enable Ngāi Tahu to exercise tribal authority, a fundamental aspect of rangatiratanga.

The examples of Lake Wairewa, Lake Waihora and nohoanga on the Rakaia River demonstrate that cultural redress provisions have not enabled Ngāi Tahu rūnaka to have authority over the resources within their rohe. Instead, they are included in decision-making processes or further included in existing provisions under the Resources Management Act. For Ngāi Tahu, the settlement concerned the restoration of their rangatiratanga through having increased control over lands and resources within their rohe, yet cultural redress mechanisms have provided limited scope for this to happen.

## Chapter 3

### The Concept and Practice of Rangatiratanga

#### Locating Ngāi Tahu Rangatiratanga within Contemporary Literature

Ngāi Tahu claim to practice rangatiratanga in a way that is compatible with the existing state structure while continuing to understand rangatiratanga in a way that reinforces their indigenous identity. This position challenges the theory discussed in Chapter One; Ngāi Tahu are an indigenous people who claim to have synthesised aspects of two perspectives that appear to be irreconcilable in theory. The current chapter proposes that Ngāi Tahu have adapted to the tension between indigenous self-determination and liberal democratic principles by exercising rangatiratanga in a way different to the common understanding.

Roger Maaka and Augie Fleras have drawn attention to the distinction between the understanding and practice of rangatiratanga: “It is one thing to talk about rangatiratanga as a principle and another to demonstrate its manifestation as practical activity. Is rangatiratanga a philosophical concept or can it be practised?” (Maaka and Fleras; 2000: 103) This chapter argues that for Ngāi Tahu, rangatiratanga is both a philosophical concept and something that can be practised. Furthermore, it suggests that each form has its own distinctive features. The structure of this chapter builds upon this distinction; first the understanding of rangatiratanga is explored and second its practical manifestation is examined.

The understanding of rangatiratanga is explored with the use of Waitangi Tribunal reports, the writing of New Zealand authors on Māori politics and the views of Ngāi Tahu people who were interviewed for the purpose of this thesis. The Ngāi Tahu understanding fits well with the wider literature; all of these sources refer to the common themes of land, whakapapa and tribal authority. The second part of this chapter looks at the practice of Ngāi Tahu rangatiratanga. Contemporary literature is largely silent here as indigenous self-determination is predominantly discussed in conceptual terms, with little reference to practical application. However, the views of TRONT members depart from the literature by discussing the practice of rangatiratanga with reference to economic independence. The views and experiences of two prominent TRONT leaders, Sir Tipene O'Regan and Tahu

Potiki are used to illustrate the TRONT practice of rangatiratanga. Ngāi Tahu defy the theory; they are an indigenous people who claim to be exercising rangatiratanga by utilising the tools of the existing state to develop and sustain their indigenous identity.

### **The understanding of rangatiratanga**

As discussed in Chapter One, the term “rangatiratanga” is used when referring to indigenous self-determination within New Zealand. Comment within New Zealand literature on rangatiratanga can be found in Waitangi Tribunal reports and writing on Māori politics, from authors such as Mason Durie and Ranginui Walker. Within these sources the same two components, which were discussed in Chapter One, arise; a claim to rights based upon being the first inhabitants of the land that is closely intertwined with Māori identity. However, these two components are broken down and discussed in further detail under the three specific components of; land, whakapapa and tribal authority.

#### *Land*

Land is a reoccurring theme within New Zealand sources that discuss rangatiratanga. Various quotations are brought together and establish a theme; there is a belief that through a people having a long-standing relationship with the land, certain rights arise. It is this relationship to the land that appears to produce the authority or rights associated with a claim to rangatiratanga.

The Waitangi Tribunal has referred to the importance of land within the understanding of rangatiratanga: “Māori insistence on their right to retain tino rangatiratanga over their land resulted in the inclusion of article 2 of the Treaty, and was a measure of the depth and intensity of their relationship to the land and other national resources.” (*Ngāi Tahu Sea Fisheries Report*, 1992: 269.) Alan Ward acknowledges the importance of land within rangatiratanga and ties this to Māori authority over resources: “Maori have always linked the loss of land with the loss of rangatiratanga – the capacity for self-determination that comes with control over resources.” (Ward, 1999:6)



As discussed in Chapter One page 10, Durie explains the importance of land with reference to its connection to Māori identity. He lists “mana whenua” as one of the “four essential constitutional elements of the Māori nation” which “provide some guidance as to the meaning of tino rangatiratanga.” (Durie, 2000: 48)<sup>15</sup> “Mana whenua” is discussed in further detail on p. 23. TRONT also refer to land and identity when conveying the understanding of rangatiratanga. *Ngāi Tahu 2025* is a draft document about tino rangatiratanga. The subtitle of the document reads “Tino rangatiratanga - Mö tätou, ä, mö kā uri ä muri ake nei. Creating our own destiny for us and our children after us.” (Ngāi Tahu 2025, 2003: 3) The opening paragraph reads “Ngāi Tahu 2025 is about tino rangatiratanga. It is about the ability to create and control our destiny.” The document later refers to the importance of land.

*Our natural environment, waters, coasts, oceans, flora, fauna and how we engage with them is crucial to our identity, our sense of unique culture and our ongoing ability to keep our tikanga and mahinga kai practices alive. It includes our commemoration of the places our tūpuna moved through in Te Waipounamu, and the particular mahinga kai resources and practises we used to maintain our ahi kā that anchors our whakapapa to the landscape. (Ngāi Tahu 2025: 10)*

Here land is discussed as an integral part of rangatiratanga. Similar to the statements made by the Waitangi Tribunal, the link between rangatiratanga and land also refers to whakapapa and the identity of people. TRONT speaks of land as a connection with their ancestors and past traditions. This connection is considered to be a way of ensuring Ngāi Tahu culture and identity is sustained.

The rünaka members who were interviewed also referred to land when explaining their understanding of rangatiratanga. The rünaka representative from Tuahiwi considered land to be at the heart of the meaning of rangatiratanga:

*Rangatiratanga identifies two questions; 'No hea koe?' and 'Na wai koe?'. That is 'Where do you come from?' and 'Whom do you belong to?'. In Māori greetings those are the first two things that we relate to each other. Those two questions go back to your genealogy and where*

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<sup>15</sup> The other three include: “mana wairua – a spiritual dimension relevant to all aspects of Māori life and organisation... mana tangata – individual wellbeing, citizenship rights and freedom from financial dependence on governments; mana Ariki – the authority of Ariki to lead and guide their own and other peoples.” (Durie, 2000: 48)

*you belong to the whenua. Because that is where you have your rangatiratanga. You cannot have rangatiratanga unless you belong somewhere and you can't have it unless you belong to someone. You belong to the owners of that soil. So we are getting back to the real heart of what rangatiratanga is. (Confidential interview: 2001, October 26)*

Land is a connecting theme within discussions of rangatiratanga. The Waitangi Tribunal, Mason Durie, Ranginui Walker, TRONT and rünaka representatives refer to land when explaining the understanding of rangatiratanga. Within these discussions there is also reference to Māori identity and whakapapa being connected to land. The following section gives further examples of comments on the connection between rangatiratanga and whakapapa.

### *Whakapapa*

The second theme that arises from comment on the understanding of rangatiratanga originates from the root of the word – ‘rangatira’. Comment on rangatiratanga often refers to whakapapa and traditional authority structures. Ranginui Walker explains Māori tribal structures are regarded as an essential component of rangatiratanga, giving social order to society through the recognition of the chief.

*Internally, hapū and iwi were stratified into three classes: rangatira (chiefs), tutua (commoners) and taurekareka (slaves). Rank and leadership were based on seniority of descent from the founding ancestors. At the head of the rangatira class was the ariki, who were first born in the senior male line. His teina, or junior brothers, were the rangatira. An ariki was respected for the qualities of tapu, mana, ihi and wehi (awesome power) which he inherited from his ancestors. (Walker, 1990: 65)*

Walker considers rangatiratanga to prescribe the role of each member in society and confers status on the basis of bloodline. At the centre of social organisation is the “ariki” or chief who gains authority through whakapapa and the ability to look after his people. In this sense “rangatiratanga” could be translated as “chieflihood” – the role of the rangatira and the surrounding societal structure based on descent. Whakapapa and the role of the chief are considered to be a significant component of rangatiratanga.

Although whakapapa is considered to be a primary factor in ordering tribal structures, Walker notes that this can be overridden by outstanding individual

behaviour. "However, these qualities [of the rangatira] could be increased by prowess in war, wise rule and generous behaviour to his people. On the other hand, they could easily be diminished by mean behaviour or unwise rule." (Walker, 1990: 65) Joan Metge also refers to rangatiratanga being related to the qualities of the chief yet her view is more abstract than that of Walker's. She states "Rangatiratanga refers most simply to the role and characteristic qualities of rangatira but, because of the symbolic relationship between the leader and the group, it is also and most often used to refer to the capacity of the group (iwi or hapū) to manage its own affairs, members and possessions." (Metge, 1995: 310)

The Tribunal has also referred to the role of the chief within the meaning of rangatiratanga in way similar to Metge: "It is the reciprocal relationship of rangatiratanga between leadership and membership that binds people together in a Māori community." (*Te Whānau o Waipareira Report*: 25) Although these comments take the traditional role of the chief and apply it in an abstract sense by relating it to the capacity of an iwi to provide for itself, whakapapa and tribal structures are still referred to as an important aspect of rangatiratanga.

TRONT refers to whakapapa and the role of the chief when explaining the understanding of rangatiratanga: "Whakapapa is the foundation of our identity as Ngāi Tahu, Ngāti Māmoe and Waitaha. It underpins whanaungatanga that must be present for any tribal activity." (Ngāi Tahu 2025: 14) Tahu Potiki, the Chief Executive Officer of TRONT, also speaks of whakapapa when explaining his understanding of rangatiratanga. "The qualities of rangatira are, in part, the qualities of leadership but they are also the embodiment of iwi mana and whakapapa." Sir Tipene O'Regan describes his understanding of rangatiratanga to be closely tied to autonomy and the role of the rangatira: "The closest approximation of rangatiratanga in contemporary terms is the concept of autonomy. It derives from rangatira, in which the autonomy and collective authority of the group was embodied within a person or leader. The leader was bound by obligations of kinship to those he or she led." (Interview with author: 2003, June 17)

Here rangatiratanga is not only tied to whakapapa and tribal organisation but also the identity of the iwi. This connection between rangatiratanga and whakapapa was also referred to by some of the rūnaka members interviewed. A kaumatua of Te Rūnanga o Wairua considers that rangatiratanga is the wrong word as it does not adequately convey the importance of whakapapa and the role of the chief:

*I really think they have coined the wrong word but it doesn't matter. It should really be arikitanga. Arikitanga to me is to recognise our own chiefs. Rangatiratanga means that everyone is a chief but in Maoridom we recognised people, lines of whakapapa. The word rangatiratanga makes us all chiefs and we are not all chiefs. The old ones know it. (Confidential interview: 2001, October 10 a)*

A kaumatua of Tuahiwi Marae emphasised the importance of whakapapa within Māori belief system and then related this to rangatiratanga:

*Tino rangatiratanga is also related to whakapapa because all things derive from whakapapa in our belief systems. So whakapapa involves the creations, it involves everything you can see around you and I. Those birds, those trees, everything has a whakapapa, it has a mauri – a life essence. So rangatiratanga recognises all those things in our belief systems and recognises that we have authority as well. (Confidential interview: 2001, October 26)*

This example demonstrates that Māori identity is at the heart of a claim to rangatiratanga. Here it is explained that whakapapa is a fundamental connecting element within Māori belief systems and rangatiratanga is considered to be closely related to whakapapa. This indicates that a claim to rangatiratanga is not just a grab at political power but also closely related to who Māori are. Examples from New Zealand literature, TRONT and Ngāi Tahu rūnaka representatives speak of whakapapa as if it provides structure for rangatiratanga. Lines of descent are considered to provide order and a basis for social organisation and identity.

### *Tribal Authority*

The third theme that arises from contemporary comment on rangatiratanga is tribal authority. The material indicates that certain rights or authority are considered to arise from people having a long-standing relationship with the land. Chapter One has already established that a fundamental aspect of indigenous self-determination is the relationship between an indigenous people and the land. The words 'mana' and 'mana whenua' are often used to convey the aspect of authority within rangatiratanga. TRONT and Ngāi Tahu rūnaka representatives also refer to "mana whenua" and authority when discussing the understanding of rangatiratanga. The long-standing Māori relationship to the land is spoken of as a means of justifying this authority. Although there is widespread agreement within these sources that rights or authority arises from a long-standing relationship with the land, there is no unified view as to the extent of these rights.

Mason Durie and Ranginui Walker refer to the role of the rangatira and tribal structures as a means of qualifying the authority within rangatiratanga. As stated earlier, Walker relates the authority within rangatiratanga back to that of the chief: "The guarantee of chieftainship [within the Treaty] is in itself a guarantee of sovereignty, because an inseparable component of chieftainship is mana whenua (tribal authority over land). Without land a chief's mana and that of his people are negated." (Walker, 1990: 93) Durie refers to the authority within rangatiratanga as 'mana whenua'; it is one of his 'four fundamental constitutional components of rangatiratanga'. Durie states "First tino rangatiratanga can be said to be about mana whenua, the right of iwi and hapū to exercise authority in the development and control of resources which they own or are supposed to own... [it] prescribe[s] tribal rights and responsibilities at hapū and iwi levels and continuing to secure relationships with land and other resources." (Durie, 2000: 48).

The *Muriwhenua Fishing Claim Report* also discussed the importance of authority within rangatiratanga:

*There are three main elements embodied in the guarantee of rangatiratanga. The first is that authority or control is crucial because without it the tribal base is threatened socially, culturally, economically and spiritually. The second is that the exercise of authority must recognise the spiritual source of taonga (and indeed of the authority itself) and the reason for stewardship as being the maintenance of the tribal base for succeeding generations. Thirdly the exercise of authority was not only over property but of persons within the kinship group and their access to tribal resources." (Muriwhenua Fishing Claim Report, 1988: 181)*

This report gave more specific detail as to the limitations of the authority within rangatiratanga: "In any event on reading the Māori text in light of contemporary statements we are satisfied that sovereignty was ceded. Tino rangatiratanga, therefore, refers not to a separate sovereignty but to tribal self-management on the lines similar to what we understand by local government." (ibid: 50) The *Te Whānau o Waipareira Report* stated: "The principle of rangatiratanga appears to be simply that Māori are guaranteed control of their own tikanga, including their social and political institutions and processes...". (Waitangi Tribunal, *Te Whānau o Waipareira Report*, 1998: 26) The *Ngāwhā Geothermal Resources Report* similarly used the terms "self-regulation" and "self-management" to describe the authority within rangatiratanga. (Waitangi Tribunal, *Ngāwhā Geothermal Resources Report*, 1993: 101)

Although there is no conclusive position reached as to the extent of rights within a claim to rangatiratanga, there is a common thread within these comments. A claim to rangatiratanga is one that seeks to provide Māori with authority over land and resources and have control over decision-making that affect Māori. The views of TRONT and the Ngāi Tahu rūnaka representatives also refer to “mana whenua” as a component of authority within rangatiratanga. The following passage recalls whakapapa in order to establish that Ngāi Tahu have 'mana whenua' rights within the South Island:

*Twenty-one generations ago, Paikea landed in the Bay of Plenty and begat Tahu Potiki, the tipuna of Ngāi Tahu. Paikea fathered Tahu Potiki at Turanga, Poverty Bay. All Ngāi Tahu claim descent from this ancestor. Within nine generations, Ngāi Tuhaitara and Ngāti Kuri settled in Te Whanganui-a-Tara (Wellington) under the respective leadership Tu Ahuriri and Maru Kaitatea. Ngāti Kuri and Ngāi Tuhaitara migrated to Te Wai Pounamu. Maru Kaitatea established Ngāti Kuri at Kaikōura. Tu Ahuriri's son, Turakautahi, placed Ngāi Tuhaitara at Kaiapoi Pā. With Kaikōura and Kaiapoi Pā established, Ngāi Tahu established mana whenua in the South Island. (Ngāi Tahu Negotiating Group, 1997: 60)*

One of the kaumatua of Te Rūnanga o Wairewa, Ngāi Tahu supported this view. When describing his understanding of rangatiratanga he spoke of mana and land:

*Mana is actually something that is given by the gods. We go back to our myths when Tane Ranginui went upstairs to get the three baskets. He actually wanted the basket of mana as well but of course he didn't get it. So mana is something you earn and it doesn't come easily. I come from the older school. Those are my thoughts on mana, to be able to walk on that land out there, that gives you mana because it once belonged to you but it was taken from you, but kei te pai. The mana is that your ancestors had it and their remains are mingled in that earth, so that is the mana you get. (Confidential interview: 2001, October 10 a)*

Although it is apparent that rangatiratanga is a claim to certain authority there is variation between views as to what this authority entails. This feature of rangatiratanga is indicative of wider literature on indigenous self-determination. The comments made here and wider literature on indigenous self-determination are largely ideological; their basis is an indefinite concept of how indigenous rights should operate without consideration of political reality. It is the adoption of this ideological position that makes it difficult for liberal democratic theorists to engage with indigenous self-determination material.

This thesis is focused upon understanding how rangatiratanga is exercised within the liberal democratic state and it proposes that the tension between indigenous

self-determination and liberal democratic thought contributes to there being a difference between the Ngāi Tahu understanding and practice of rangatiratanga. So far it has been established that there are common themes within the understanding of rangatiratanga that include land, whakapapa and tribal authority and that the Ngāi Tahu understanding of rangatiratanga shares these themes.

### **The practice of rangatiratanga**

The remainder of this chapter establishes the difference between the way Ngāi Tahu rangatiratanga is understood and the way it is exercised. Although New Zealand literature is largely silent on how rangatiratanga is practiced, there is comment upon how the understanding is different from the practice. Sir Hugh Kawharu comments:

*[T]he trusteeship inherent in rangatiratanga... [the] relationship between the leaders and the led; between trustee and beneficiary has become diversified and particularised in proportion to the breaking down of tribal communities and kin relations, the specifying of individual rights and obligations over tribal property, and the limiting of the role of chief and elder to that of figurehead, shorn of authority, if not of influence. (Kawharu, 1996: 12)*

Hineani Melbourne writes similarly of Kara Puketapu's view "Kara does not think the old system of rangatiratanga is possible today. He says all people of Māori ancestry now assert the right to make decisions and be consulted. They would find it difficult to accept the old authority where a person had the right to listen and comment but the rangatira made the final decision." (Melbourne, 1995: 49) These comments acknowledge that the base rangatiratanga once rested upon has changed. In the wake of abrupt transition brought by colonisation, the practice of rangatiratanga has had to adjust in order to operate within a contemporary environment. Ngāi Tahu have also adjusted by claiming to exercise rangatiratanga through having economic independence.

### *Te Rūnanga o Ngāi Tahu views on practicing rangatiratanga*

There is a sharp distinction between the Ngāi Tahu understanding of rangatiratanga and the way it practically functions. The views and experiences of two prominent Ngāi Tahu leaders emphasise this distinction. Tipene O'Regan, former Chairman of

the Ngāi Tahu Negotiating Group and Tahu Potiki, the Chief Executive Officer (CEO) of TRONT, both state that having strong financial capacity is a fundamental aspect of exercising rangatiratanga within a contemporary context.

Sir Tipene O'Regan succinctly communicates that he believes economic independence to be crucial to the practice of rangatiratanga: "We seek rangatiratanga. It's a concept limited now by circumstance but still potent. To us it means control of our assets. If you haven't got control then rangatiratanga is just a slogan for prayer time." (O'Regan, 1993: 46) O'Regan acknowledges that circumstances have changed and Ngāi Tahu rangatiratanga is limited "because the world has changed and the state is different." (Interview with author: 2003, June 17) However, he considers that through the control of assets rangatiratanga can shift from concept, or "prayer time", to reality. O'Regan uses the example of Kaikōura to illustrate this point:

*I think few things gave me greater joy than to watch the people of Kaikōura not so long ago simply decide to double the length of their meeting house and pay cash for it. There was no bingo. They paid for it out of their own locally earned and developed resources. They had control of their own lives. (O'Regan, 2000: 8)*

O'Regan continues by making the distinction between the concept and practice of rangatiratanga: "Rangatiratanga as a concept is meaningless unless you open your own resources to a sufficient degree. It is just an assertion of identity unless you have the capacity to give it effect. That basically means owning your own capital resources" (Interview with author: 2003, June 17). O'Regan considers the concept of rangatiratanga has life breathed into it with the aid of cash. Without financial capacity rangatiratanga remains dormant as an indigenous concept that is incapable of being practiced. He also stresses that the ability of Ngāi Tahu to exercise their rangatiratanga is dependent upon their economic standing: "That means you have to manage those resources in a long-term sustainable way, otherwise rangatiratanga is not sustainable." (Ibid) He goes on to explain: "Unless we have the capacity to take the Crown to the Courts, that is where you go to war, we are useless. We have to find the trick of conserving capital over time so that we can continue to fund rangatiratanga. Rangatiratanga without capital is like having an army without weapons." (Ibid)

Tahu Potiki acknowledges the importance of economic independence to the pursuit of rangatiratanga: "Iwi will argue that without an economic base then tino rangatiratanga is pointless and, of course, economic independence is essential to the



pursuit of self-determination." (Potiki, 2000: 53) He states: "Economic independence or indigenous self-sufficiency is essential for iwi if they are to develop as self-determining entities." (Ibid: 54) When discussing the practice of Ngāi Tahu rangatiratanga, O'Regan and Potiki did not refer to land, whakapapa or tribal authority. Instead they refer to the realities of the existing state. These members of TRONT have acknowledged that the existing state will not recognise a claim to rights on the basis of being indigenous. O'Regan's comment: "If you haven't got control then rangatiratanga is just a slogan for prayer time" indicates that there has been a realisation that an assertion of indigenous status holds limited ability to empower the iwi. A conscious decision has been made by TRONT to adapt to certain aspects of the existing state in order for Ngāi Tahu to increase their authority and independence.

*Papatipu rünaka representatives' views on practicing rangatiratanga*

Some of the rünaka representatives who were interviewed related the practice of rangatiratanga to economic independence. However, the comments were not as focused as those of Potiki or O'Regan. The representative from Rapaki stated: "Economics is part of rangatiratanga but we see it as the facilitating that enables us to do other things. If you have the resources you can deal with resource consents..." (Confidential interview: 2001, September 20) Having more money was considered to greatly enhance the authority of rünaka. One representative stated: "The money has given us more of a say out there, they take us seriously. Oh it is very nice. I sit in at the Selwyn Council and I can say 'Oh, you can address Ngāi Tahu on this one, they are the statutory body.' They quiver a wee bit because they don't know how far they can push them." (Confidential interview: 2001, October 26) Another rünaka representative considered the financial power of Ngāi Tahu to have an effect on the rünaka's ability to have influence within the area but this was not directly tied to practicing rangatiratanga:

*In Onuku, they had the issue of sewer discharge resource consent application for Araroa and they primarily worked with Te Rünanga. We didn't, we essentially did it on our own but I stayed in touch with Bob and Linda [TRONT Resource Management Unit members] so they knew what we were doing and in the crunch, the final arguments, we sort of hinted that if we were ignored that we would call on the resources of Ngāi Tahu. That is always the back up, if you like, the big guns. (Confidential interview: 2001, October 10 b)*

Although rūnaka representatives considered that increased funding had enabled greater authority within their district they did not tightly tie this to practicing rangatiratanga. The view that the practice of rangatiratanga is dependent on economic independence was more strongly communicated by members of TRONT. The different views between key TRONT members and papatipu rūnaka representatives indicate that the iwi is still internally rationalising the changes brought by the settlement. This is discussed in greater detail in Chapter Four.

Despite there being an inconsistency in views between TRONT and papatipu rūnaka on Ngāi Tahu exercising rangatiratanga through economic independence, it still can be said that the current position of Ngāi Tahu challenges the theory discussed in chapter one. The theory has indicated that there is a basic clash between liberal democratic principles and indigenous self-determination that would not make it possible for indigenous self-determination to be practiced within the liberal democratic state. Ngāi Tahu defy this theoretical position by claiming to exercise rangatiratanga in a way that is compatible with the existing state yet still internally fosters their indigenous identity. The following chapter looks closely at the internal structures of Ngāi Tahu in order to understand whether it is achievable for the iwi to synthesise aspects of liberal democracy with those of Ngāi Tahu rangatiratanga.

## Conclusion

This chapter has established that there is a difference between the way Ngāi Tahu understand rangatiratanga and the way it is practically carried out. Tribunal reports, the writings of authors on Māori politics as well as interviews from members of Ngāi Tahu have contributed to establishing a picture of how rangatiratanga is understood within a contemporary context. Land, whakapapa and authority underpin this concept. They intertwine and contribute to an understanding that certain rights arise from a long-standing relationship between a people and the land. Rights are considered to arise through Māori life and culture mingling with the land and its resources. The Ngāi Tahu understanding rangatiratanga fits this wider literature. However, if members of TRONT speak of rangatiratanga in practical terms, there is a sharp change in the type of language used. Having assets and economic independence are considered to be the pillars of exercising Ngāi Tahu rangatiratanga within a contemporary context.

As discussed in Chapter One, liberal democratic principles are based upon the concept of individual equality and this does not sit well with a claim to special rights based upon being the first inhabitants of a land. This chapter proposes that Ngāi Tahu have responded to this tension by exercising rangatiratanga in a way that is compatible with the existing state structure while understanding rangatiratanga in a way that reinforces their indigenous identity as tangata whenua of Te Waipounamu. This position challenges the theory through attempting to synthesise aspects of two world views that appear to be irreconcilable. The next chapter looks closely at the internal structure of Ngāi Tahu in order to understand how the iwi sustains their identity as tangata whenua within a state structure based upon individual equality.

## Chapter 4

### **Economic Redress within the Ngāi Tahu Settlement**

#### Exercising Rangatiratanga through Economic Independence

This chapter looks at the internal mechanics of Te Rūnanga o Ngāi Tahu in order to understand how Ngāi Tahu have internalised their indigenous identity. Through utilising the liberally democratic condoned tools of economic independence, Ngāi Tahu has become more powerful within its rohe. This increased autonomy is based upon their financial position, not upon the recognition of rights as the tangata whenua of Te Waipounamu. This position raises questions as to how the identity of Ngāi Tahu is sustained if they are operating as a corporate entity that competes within a free market economy. The theory indicates that the task of synthesising these aspects with those of indigenous self-determination is not possible. Yet, prominent members of TRONT claim that Ngāi Tahu rangatiratanga is exercised through having this financial independence and the internal structures of Ngāi Tahu ensure the cultural identity of the iwi is sustained. This chapter looks at the internal mechanics of this situation.

Ngāi Tahu Holdings functions as the corporate entity of Ngāi Tahu, it generates revenue that is fed into Ngāi Tahu development. It is for this arm of TRONT to develop Ngāi Tahu culture and identity within a liberal democratic context. The funds generated by Ngāi Tahu Holdings are distributed to the eighteen papatipu rūnaka that comprise Ngāi Tahu. It is for these papatipu rūnaka to utilise the funds generated by Ngāi Tahu Holdings and the initiatives developed by Ngāi Tahu Development in order for Ngāi Tahu rangatiratanga to operate on a level that confirms Ngāi Tahu as the tangata whenua of te Waipounamu. The interview material has demonstrated that although settlement funds have enabled these papatipu rūnaka to have greater authority and influence within their rohe, this is not necessarily associated with exercising rangatiratanga. Furthermore, the increased revenue brought by settlement has created some internal difficulties for papatipu rūnaka. First, this chapter traces how settlement funds reach individual rūnaka. Second, interview material is drawn upon in order to understand how increased funding has impacted upon the ability of these rūnaka to exercise rangatiratanga. Finally, this chapter suggests that it is too soon after settlement to conclusively assess whether Ngāi Tahu have been successful in synthesising aspects of their

culture with the liberal democratic state in order to exercise rangatiratanga within a contemporary context.

### **Receiving economic redress**

Ngāi Tahu has restructured in order for settlement assets to be managed and distributed to the people of Ngāi Tahu. Settlement redress cannot be transferred to a claimant group until there is a governance entity in place that has been considered and ratified by members of the claimant group. The Ngāi Tahu Trust Board was dissolved and TRONT was established through legislation. Within this legislation the Ngāi Tahu Charter defines the members of Ngāi Tahu and orders the structure and relationships of the various entities that comprise TRONT. Amongst these are the three companies that manage the assets, generate profit and distribute benefits to the people of Ngāi Tahu. Money is fed directly to papatipu rūnaka through an annual grant of \$100,000 per annum.

### *Te Rūnanga o Ngāi Tahu Act*

Te Rūnanga o Ngāi Tahu Act 1996 made Ngāi Tahu a legal entity and provided a structure that could adequately manage the settlement assets. The Act gave strength to Ngāi Tahu Holdings Incorporated and gave birth to Ngāi Tahu Development Incorporated. The tribe was no longer accountable to the Crown but an independent legal entity.<sup>16</sup> Neither the Crown nor Ngāi Tahu considered The Ngāi Tahu Trust Board to be an appropriate governance entity as Māori Trust Boards are ultimately accountable to the Minister of Māori Affairs and not to the members of the claimant community.<sup>17</sup> The Te Runanga o Ngāi Tahu Act 1996 established the body corporate known as Te Rūnanga o Ngāi Tahu (TRONT) as the representative of the Ngāi Tahu Whānui. It has power to purchase, accept, hold, transfer and lease property and to sue and to be sued. It also has all the rights, powers, and privileges

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<sup>16</sup> Under the previous Trust Board structure, Ngāi Tahu was legally accountable to the Crown rather than their papatipu rūnaka. Ministerial control of the Trust Board was so tight that the tribe was not permitted to spend over \$200 without the Ministerial approval. (Highman, 1997, 44)

of a natural person. The members of TRONT are representatives of each of the eighteen papatipu rünaka of Ngäi Tahu.<sup>18</sup>

*The Charter of Te Rünanga o Ngäi Tahu*

Before the commencement of this Act could take place the representatives of the papatipu rünaka of Ngäi Tahu had to adopt the Charter of Te Rünanga o Ngäi Tahu.<sup>19</sup> The Ngäi Tahu Charter stipulates the administration and structure of TRONT, the manner in which the papatipu rünaka appoint their representatives to TRONT and the powers, duties and obligations of TRONT when administering assets. There are three companies referred to in the Charter; Ngäi Tahu Group Management Limited, Ngäi Tahu Holdings Corporation Limited and Ngäi Tahu Development Corporation Limited.

Ngäi Tahu Group Management Limited is responsible for the overall management, monitoring and co-ordination between the two other companies. The Ngäi Tahu Holdings Corporation is the commercial component of TRONT. Its function is to “grow the economic base for the benefit of future generations and to generate sufficient cash flow on an ongoing basis to fund the tribe’s development and administration activities.” (*Te Rünanga o Ngäi Tahu website <http://www.ngaitahu.iwi.nz>: 2001, October 14*) The assets managed by Ngäi Tahu Holdings Corporation provide the earnings base from which social policy initiatives are funded. The profit generated by Ngäi Tahu Holdings is fed into Ngäi Tahu Development. Ngäi Tahu Development Corporation Limited is then responsible for the delivery for the social and cultural aspects of the tribe’s development. (Ngäi Tahu Negotiating Group: 51)<sup>20</sup> The charter itself constitutes a contract between

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<sup>17</sup> Section 13 of the Te Rünanga o Ngäi Tahu Act dissolves the Ngäi Tahu Mäori trust Board. Under s 14 all property held by the Trust Board is vested in Te Rünanga o Ngäi Tahu.

<sup>18</sup> The first Schedule of the Bill lists 18 Papatipu Rünanga and sets out their takiwa.

<sup>19</sup> Section 11(1)

<sup>20</sup> Ngäi Tahu Development Corporation’s role is to pursue social and cultural development objectives. These objectives are defined in the Charter as follows: “Social and cultural development includes education, health care, insurance, superannuation, the enhancement of community facilities, the fostering of the study of Ngäi Tahu whakapapa, tikanga, history and tradition, the promotion of the composition and performance of waiata, puräkau and whaikörero, the promotion and active protection of taoka Ngäi tahu, wahi taoka and koiwi tangata, the fostering of whare wänanga and whare kura, the fostering of all aspects of Ngäi Tahu and Mäori culture (including traditional and contemporary arts and crafts) and the teaching of Te Reo Mäori with particular emphasis on Kai Tahu dialects.” (Clause 1.2 of TRONT Charter)

TRONT and each of the eighteen papatipu rünaka. Each rünaka is to appoint a representative on to TRONT and of these representatives there is to be an elected Kaiwhakahaere (leader) and Deputy Kaiwhakahaere.<sup>21</sup>

The structure of Ngäi Tahu is indicative of the way the iwi exercises rangatiratanga within a liberal democratic state. Ngäi Tahu Holdings Corporation has the task of exercising Ngäi Tahu rangatiratanga through generating revenue for the iwi. Part of the revenue generated here is fed into Ngäi Tahu Development which has looks after the “social and cultural” development of Ngäi Tahu. The Ngäi Tahu Development “Strategic Objectives 200-01” includes “Culture and Identity”:

*The Culture & Identity outcome area seeks to support rünaka to secure the future integrity of Kai Tahutanga by providing protection for Ngäi Tahu taoka underpinned by participation in te reo, arts and heritage activity in order to: ensure the redevelopment and continuance of the indigenous culture of Te Waipounamu; and provide for Ngäi Tahu whānui to be enriched by their cultural inheritance. (Te Rünanga o Ngäi Tahu website <http://www.ngaitahu.iwi.nz>, : 2004, April 14)*

Another of the initiatives undertaken by Ngäi Tahu Development is the “Kai Hiku Project”. It is concerned with empowering papatipu rünaka “to advance on the development pathway towards tino rakatirataka.”<sup>22</sup> (Ibid) In this sense, Ngäi Tahu have undertaken to sustain their indigenous identity with the funds generated from the corporate arm of TRONT. Although the theory in chapter one demonstrates there are tensions between liberal democratic thought and indigenous self-determination, the position of Ngäi Tahu indicates that a synthesis of these two evidently opposing perspectives may be possible. However, interview material from papatipu rünaka representatives indicate that the internal structures of Ngäi Tahu are still adapting to these changes.

### **Transfer of funds to papatipu rünaka**

TRONT allocated an initial one off grant of \$380,000 to each of the papatipu rünaka and they also receive an annual grant of \$100,000. The purpose of this grant

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<sup>21</sup> The current Kaiwhakahaere of TRONT is Mark Solomon.

<sup>22</sup> “Tino rakatirataka” is Ngäi Tahu dialect for “tino rangatiratanga”.

is to assist the rŭnaka with running their operations and development. These include communication worker salaries, rŭnaka organisational costs, and establishment of a range of social and cultural programmes as well as rŭnaka administration costs. This is considered to “help rŭnaka meet their responsibilities to their members, Te Rŭnanga o Ngāi Tahu, and the wider community of the rŭnaka.” (*Te Rŭnanga o Ngāi Tahu website <http://www.ngaitahu.iwi.nz>; 2003, May 16* ) TRONT has ensured that the rŭnaka are accountable for these grants by entering into a contract with each of the papatipu rŭnaka: “The underlying philosophy of this approach is that all rŭnaka are capable and responsible for their own affairs but, in the case of a complaint of mismanagement or misappropriation being sustained, there is an agreed intervention process that will be followed by both parties.” (Ibid: 2003, October 23)

As discussed in the previous chapter, prominent members of TRONT consider their increased financial capacity enables Ngāi Tahu to exercise rangatiratanga in a contemporary context. However, the difference between exercising rangatiratanga and simply being economically independent depends upon the internal structures of Ngāi Tahu being able to sustain an indigenous identity within the existing state. The structure of TRONT has been established to carry out this task. Ngāi Tahu Holdings generates revenue that is fed to the cultural and social development arm of TRONT, Ngāi Tahu Development. Cultural initiative and funding are fed down to the papatipu rŭnaka. It is for these rŭnaka to effectively synthesise aspects of their Ngāi Tahu culture with those of liberal democracy in order for Ngāi Tahu to exercise rangatiratanga within a contemporary context.

This position is now explored with the use of interview material with the papatipu rŭnaka representatives. Although the representatives indicated that economic redress has enabled rŭnaka to have greater influence within their rohe, this was not directly associated with the exercise of rangatiratanga. The interviewees stated that their authority has been increased through three main way; having a full time staff member; having the financial capacity to litigate; and having the influence of TRONT as a back up. The interviewees did not directly associate this increased authority with the exercise of rangatiratanga. Furthermore, it was indicated that the increased revenue brought by the settlement had altered internal relationships and practices within some papatipu rŭnaka.



*Full time staff member*

Increased funding has enabled papatipu rünaka to be more organised and efficient when dealing with local authorities and resource consent procedures. Part of this increased organisation is related to the rünaka now having the financial capacity to have a full time staff member who is paid to deal with the local authority and the processing of resource consents. Each of the rünaka are at various stages of development with regard to how they liase with local authorities. For example: Tuahiwi Rünaka has a Resource Management Committee; Taumutu Rünaka has a Resource Management Officer; and Onuku has a Heritage Officer who records sites and researches whakapapa as well as handling resource consents.

Despite the different levels of development, all of the rünaka representatives interviewed agreed that inclusion in local government decision-making had improved by having an employed person working for the rünaka. The Taumutu representative stated:

*We have more input but that has been the money. Not anything else. Being on their backs. Giving them a phone call. It doesn't give us any more clout than anyone else but it is just being a pain in the arse. Having the ability and time to follow through. I specifically do this for a job. There were a lot of people doing this before [the settlement] on a voluntary basis but they still had to make an income, they still had to feed their families and worry about that petrol bill because they are on a benefit. Dad run three vehicles into the ground for the claim. You have to think that I am employed now. It is my job to worry about these things. (Confidential interview: 2001, October 26)*

The Rapaki representative also commented upon the advantage of having increased funding and a paid employee:

*One of the things the settlement has done is made funds available for the papatipu rünanga. We get \$100,000 a year for operating. That means we have a staff person, we don't have major financial concerns about doing things, we have computers. If anything we are buried in information. We are in a position where we have the information to make decisions. (Confidential interview: 2001, September 20)*

The Onuku representative considered that having a paid employee had enabled the rünaka to be more involved in the issues that concerned them within their rohe.

*We wouldn't have a Heritage Officer if it wasn't for the settlement. It has been something I have always been interested in. We are more involved than we would have been... I get a wage top up now from the marae. I love the work I am doing. Working on the heritage and the*

*old sites, the old pa sites, urupā sites and hāngi sites that we have found. (Confidential interview: 2001, October 10 b)*

These comments suggest that economic redress has enabled rūnaka to have greater influence within their area through having a paid staff member who is solely dedicated to ensuring the interests if the rūnaka are observed. This person works on local government issues and ensures that tangata whenua concerns are voiced. Although these rūnaka are exercising a greater degree of authority within their rohe, this is directly derived from their increased financial resources.

### *Ability to litigate*

The economic redress within the settlement has made litigation in the Environment Court a realistic option for rūnaka. If a resource consent application goes against tangata whenua wishes, yet is still approved by the local authority then an objection can be made. Ngāi Tahu inclusion depends upon whether the local authority notifies the rūnaka of “non-publicly notified” consents. The local authority is not required to consult with Ngāi Tahu if the consent is classified as “non-publicly notified”. Environment Canterbury considers the objection and it may be dismissed or upheld in part. If there is still dissatisfaction with the decision the applicant or submitter may proceed to the Environment Court where decisions made by local authorities can be overridden.<sup>23</sup>

The ability to litigate enables Ngāi Tahu to have increased bargaining power when dealing with local authorities over resource consents. Those who were interviewed stated that prior to settlement, rūnaka budgets would not be large enough to cater for legal representation in a court case. The Rapaki representative commented: “Probably in 1991, I wouldn’t be surprised if the budget for the rūnanga of the day was \$1,000 a year. Now it is \$100,000, that is quite a different level.” (Confidential interview: 2001, September 20) He also spoke of the Governors Bay sewage discharge consent application. He considered having the ability to proceed to the Environment Court as strengthening the rūnaka’s position with the local authority:

*We fought our number one interest all the way through, which is the protection of our kai moana. In the final presentation we put forward the case that there are legal requirements under the Resource*

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<sup>23</sup> For further information visit <http://www.ecan.govt.nz/Consents/after-decisions.htm>

*Management Act and you are not meeting those. The implication was that if you turn us down for this we will proceed to the Environmental Court. TRONT has only been there once and that was on a clarification issue. We will end up there sometime and we certainly have the capacity to do it. So that strengthens our hand and the local authorities are aware of that. That is a difference. (Ibid)*

The Taumutu representative also stated that having litigation as a realistic option made the rünaka more influential.

*We are now a force to be reckoned with. If you give it to us in writing then watch out. The threat of litigation is now there. The drain cleaning process around here has been going on for ten years. Every meeting it would be promised it would be improved or they would get back in contact with us. When Dad was on site they behaved themselves but as soon as he wasn't there they went back to their old ways. Thousands upon thousands of eels were killed. Until we pulled the plug and said "No more." We said we wanted litigation. That got the farmers around here upset – that tangata whenua were stopping them from cleaning out their drains. (Confidential interview: 2001, October 26)*

The economic redress brought by the settlement has enabled rünaka to have a greater influence upon the decision-making within their rohe. However, this only enables the aspects of rangatiratanga to be practiced that are compatible with the liberal democratic state. Rünaka have increased autonomy but this has been facilitated purely through a boost in their financial capacity.

#### *Influence of Te Rünanga o Ngäi Tahu*

The presence of TRONT has also strengthened the position of rünaka within their respective rohe. Rünaka representatives stated that having an organised body to fall back on provided them with strong support when confrontational situations arose. The Rapaki representative recalled:

*In Onuku, they had the issue of sewer discharge resource consent application for Akaroa and they primarily worked with TRONT. We didn't, we essentially did it on our own but I stayed in touch with Bob and Linda. (TRONT Resource Management Unit members) They knew what we were doing and in the crunch, the final arguments, we sort of hinted that if we were ignored that we would call upon the resources of Ngäi Tahu. That is always the back up, if you like, the big guns. (Confidential interview: 2001, September 20)*

The Taumutu representative commented that the rünaka relies upon TRONT when they are challenged. They are used as a “back up” to add influence if the usual procedures are not effective.

*We are saying “No” to all irrigation, drinking, the works from that stream. That is the rünanga stance; it is culturally significant to us. We have got the ability now to say “No” and we are using that ability. Ngäi Tahu are sitting in the background waiting to see what is going to come of it because they are ready to step in with us. ... it is going to make it clear that when we do say “No”, we have got a valid point and we are not just talking to the gods. We have got a valid reason. (Confidential interview: 2001, October 26)*

The representative considered the influence of TRONT has sway when dealing with local authorities.

*The money have given us more of a say out there, they take us seriously. Oh, it is very nice. I sit in at Selwyn [Council] and I can say “Oh, you can address Ngäi Tahu on this one, they are the statutory body.” They quiver a wee bit because they don’t know how far they can push them. Councils have to consult rünanga but in law it is Te Rünanga who has the say. (Ibid)*

Rünaka representatives clearly considered that funds brought by the settlement had enabled them to be in a stronger position to pursue their interests. However, this empowerment is derived from their increased financial mobility and organisation, not recognition of rights derived from tangata whenua status. Although the papatipu rünaka have an increased capacity to deal with local authorities and to proceed to court if they wish, their members have the same standing as any other interest groups within the community. Papatipu rünaka representatives considered that economic independence had enabled their rünaka to have more authority yet, unlike the comments of Potiki and O’Regan, this was not directly associated with the exercise of rangatiratanga. Exercising rangatiratanga through economic independence may fit well with the structures of the existing state but it does not enable Ngäi Tahu to be differentiated from any other contender within the marketplace.

Economic freedom may be compatible with liberal democratic principles and therefore is able to serve the dual purpose of providing Ngäi Tahu with autonomy while not impinging upon the structures of the existing state. However, this form of exercising rangatiratanga does not immediately provide the iwi with the ability to exercise tribal authority based upon their status as tangata whenua. The funds generated are transferred internally and distributed through initiatives that are

focused upon developing and sustaining the cultural identity of Ngāi Tahu. This places a heavy responsibility upon the shoulders of Ngāi Tahu Development and the papatipu rūnaka - ensuring the development of a unique Ngāi Tahu culture and identity within the liberal democratic state.

Tahu Potiki acknowledges the difficulties of developing a strong Ngāi Tahu identity from within a corporate structure:

*The corporate model is in conflict with itself as an agent for iwi. It will ultimately be unable to serve iwi except as a producer of profit that is then transformed into a 'share' to be distributed to the 'share-holder'... the share-holder is defined by whakapapa and there is no expectation to perpetrate the cultural essence of the iwi. (Potiki, 2000: 51)*

Tahu Potiki is weary of the tension between 'Ngāi Tahu tradition' and 'corporatism'. He explains that "Distributivism brings with it a notion of egalitarianism that threatens to undermine our world view... Corporate principles are different. The sole ethic is profit... The people inside corporations are simply following legal and "ethical" standards of the corporate form." (Ibid: 53) Potiki believes that if Ngāi Tahu are to maintain their place in the world then there must be a "conscious decision to retain traditional principles and values and to imbue all of our activities with their character". (Ibid: 52) In this sense, he considers the corporate model to be a vehicle for Ngāi Tahu rangatiratanga and it is for Ngāi Tahu's internal structures to ensure a Ngāi Tahu identity is sustained. Although this increased funding has enabled Ngāi Tahu to exercise tribal authority over decision-making that affects resources and members of Ngāi Tahu, the restructuring and changes that Ngāi Tahu have undergone in order to receive this money have had an impact upon the internal dynamics of the iwi. The remainder of this chapter draws upon interview material to understand how the internal structures and practices of Ngāi Tahu papatipu rūnaka have managed this injection of cash.

### **Internal effects of economic redress**

The interview material revealed two main concerns that rūnaka representatives had. The first was the way increased finances had altered the manner in which rūnaka function. Secondly, there was uneasiness that Ngāi Tahu was centralised through the establishment of TRONT, which controlled the settlement assets. These two

points are discussed in turn and illustrated with examples from the interview material.

*Relationships and practices within papatipu rünaka*

Although rünaka representatives consider that increased funding has enhanced their ability to participate in issues within their rohe, it had also altered internal procedures. Some of the representatives indicated that the increased funding received through settlement had a negative effect on the internal functions of the rünaka. The representative from Onuku believed that the money brought by settlement had deteriorated the relationships between rünaka members.

*There has been a lot of change for our people, especially when the claim went through. Each rünanga got money, I found that we lost the... you know when you do things for nothing... you know when all your work at the marae was done for nothing, all free labour. For me now, the money is there now. Everyone is getting a wage and things like that. In some ways is a good thing but in other ways we have lost that we will go and help each other for no cost. You do it yourself. The ones from Christchurch would go over to Akaroa and do the hängis and we would do that from our heart you know. With the money now that has come it seems to be money driven. We get petrol vouchers now for going over, which I don't mind either. It has always come out of our pockets. To me we have just lost a bit from here, from the heart. People are snarling at each other and things like that, whereas before everyone was pretty relaxed and got on together and we worked in together, there were good working-bees. We worked for ten years fund raising for the marae. (Confidential interview: 2001, October 10 b)*

Similarly, the representative from Koukourarata sees the increased funding as creating problems within the rünaka by attracting people who are motivated towards money as opposed to anything else.

*Having access to money has created problems. I think because it brings out a different type of person. You'll get people who have these hot-shot ideas a lot of them didn't even know they were Māori until they found out you can get money.... then "Hello!" I think that contradicts the older ones who are used to doing everything for nothing and plodding along. Whereas in today's world, if we don't get paid for it then we are not going to do it.*

*I think the settlement, the putea – Ngāti Putea, that's what we call it. That has created problems of its own. It is all right have the ability to set up an economic base, which is what we are striving to do but you have to have the right people with the right attitude. Not one of these... just rip in, I can access this and do this and the other thing. At the*

*same time you have to maintain your own values. The putea takes a lot of those things away. (Confidential interview: 2001, October 10 c)*

This comment suggests that Ngāi Tahu members find it more difficult to sustain traditional practices in the new environment where rūnaka have hugely increased funding.

The representative from Rapaki indicated that with increased funding available there was an initial thought that a new wharenui would be built. However, there were objections from other rūnaka members. They wished to fund-raise for the new whare as this was the way things had been done in the past and it also brought everyone together.

*Those who participate in the rūnanga meetings maybe are still adjusting in a number of ways to the new opportunities and options available. For instance... Ngāi Tahu has made it available to each of the papatipu rūnanga Te Putea Tautoko (for capital investments) which is now up to \$600,000 with interest. So that is available for capital work and we need to replace our wharenui – Te Wheke. My first reaction was to take \$200,000 of that money but the response was to have a fund-raiser, because that is the way that things have always been done. Now that will raise some money, part of it is also a social issue of bringing people together. So, there is the difference... we haven't made it as yet, we are in the transition stages and it certainly has made some differences in terms of the scale. (Confidential interview: 2001, September 20)*

Rūnaka members were concerned that the increased funding has altered the way work is done. There seems to be a concern that work or items are just paid for instead of banding together to complete a task. Similarly, there is concern that people are less willing and participatory once there is the option of being paid for work. In essence, there appears to be concern that the money has changed how Ngāi Tahu people relate to each other as well as some of the fundamental values regarding responsibilities and relations between members. Although Tahu Potiki has stated that it is for Ngāi Tahu to sustain its identity from within a corporate structure, this interview material indicates that this is a difficult and ongoing task.

#### *Relationship between papatipu rūnaka and TRONT*

The second issue that concerned the interviewees was that the structure of Ngāi Tahu had changed and become far more centralised. Tipene O'Regan considers the papatipu rūnaka to be fundamental to Ngāi Tahu's identity and rangatiratanga.

O'Regan states that papatipu rūnaka are recognised as “the representative heart of Ngāi Tahu history and culture” and where “the tino rangatiratanga of Ngāi Tahu resides.” (Highman: 1997, 44) This view of rangatiratanga is markedly different from the comments of O'Regan on rangatiratanga being synonymous with economic independence. It indicates the tension between sustaining an indigenous identity while still effectively functioning as a competitive corporate entity. Although the structure of TRONT has separated out these two functions, they are still closely interdependent.

The Rapaki representative saw the tension between papatipu rūnaka and TRONT as something that is still being worked through: “I look at the situation of Ngāi Tahu as a potential federal system. In which Te iwi do certain things and ngā rūnanga do certain things but we haven't sorted out who does what yet, there is quite a bit of overlap.” (Confidential interview: 2001, September 20) He went on to explain:

*The problem is essentially this, that traditionally the kaitiaki responsibility, the rangatiratanga lay with the hapū but legally, most of it lies with the iwi and so we are still working through that relationship. That is why in the case of resource consents they go to both [TRONT and ngā rūnanga]. We sort it out amongst ourselves, in our case we tend to do our own thing. Some papatipu rūnanga rely quite heavily upon the iwi. (Ibid)*

The Wairewa representative was not so concerned about the centralised position of TRONT but he did think that the internal structure brought by settlement had altered the way members of Ngāi Tahu relate to each other.

*They have changed because the government has caused Ngāi Tahu to split into hapū and once the hapū were able to walk anywhere they wanted and were welcomed by another hapū. Now it is different, there is a law that say we have to be legal bodies in our own right, each hapū belongs to a certain area and define themselves and then you have to register yourself with that area. Like an incorporated society, a charitable trust or whatever. Now that rūnanga have formed, now when Onuku go to Wairewa they are not regarded as whānau, they are regarded as Onuku. It's being put in a little box. (Confidential interview: 2001, October 10 a)*

The Taumutu representative thought different parts of TRONT related to rūnaka in different ways. In particular, the Natural Resource Unit was thought to be positive. Overall, the representative supported the view that the relationships between rūnaka and TRONT were still developing.



*You have got to think that this was landed upon us, that amount of money. We had to get a structure up and running very, very quickly. There were mistakes made and there will be more mistakes made. As long as we can stop them before they get out of hand. I mean eighteen papatipu rünanga to deal with, pretty daunting. We have got some pretty strong people out there who will fight for their rünangas until their death. (Confidential interview: 2001, October 26)*

There also appeared to be a difference between TRONT and the papatipu rünaka in relation to how Ngäi Tahu rangatiratanga was exercised. As discussed in Chapter three, key members of TRONT clearly associate increased economic capacity with the exercise of rangatiratanga. However, this was not demonstrated by the papatipu rünaka representatives. While they considered that economic redress had enabled them to have increased authority within their rohe, this was not directly associated with the exercise of rangatiratanga.

## Conclusion

Ngäi Tahu are an indigenous people utilising the tools of a liberal democracy in order to sustain and grow their own culture. This situation challenges the theory discussed in chapter one; Ngäi Tahu have undertaken to synthesise aspects of rangatiratanga with those of liberal democracy in order to increase their standing as an indigenous people within the liberal democratic state. Economic independence has been embraced as a vehicle for rangatiratanga and enabled the iwi have greater authority and control over their own development. Fluid movement within a liberal democratic society is lubricated with money.

However, a vital component of rangatiratanga is being tangata whenua and without this aspect the exercise of rangatiratanga is no different to being economically independent. For this reason Ngäi Tahu Development has the task of building Ngäi Tahu culture and identity and this responsibility feeds down to the internal structures of Ngäi Tahu. It is at this point that the tension between liberal democratic principles and indigenous self-determination becomes apparent.

The interview material suggests that although economic redress has enabled rünaka to exercise authority within their rohe, this was not directly associated with the exercise of rangatiratanga. Furthermore, the injection of cash brought by the settlement has altered some relationships and practices within papatipu rünaka and

placed a strain on the relationship between papatipu rūnaka and TRONT. Despite these internal difficulties, it is too early after settlement to conclusively assess whether Ngāi Tahu have managed to effectively synthesise aspects of their culture with those of the existing state in order to exercise rangatiratanga. Interview material and comments from prominent members of TRONT indicate that this is a process that is currently being undertaken by the iwi.

The theory suggests this is an incredibly difficult task as liberal democratic principles and indigenous self-determination appear to be irreconcilable. The following chapter returns to the theory discussed earlier and questions whether Ngāi Tahu have in fact undertaken an impossible task or, whether the theory is inapplicable as it is incapable of accurately assessing an iwi exercising rangatiratanga from within the liberal democratic state.

## Chapter 5

### Theory and Political Reality

#### Practicing Rangatiratanga within the Liberal Democratic State

This thesis has focused on establishing that there is a clash between the principles of liberal democracy and rangatiratanga. The theory discussed in Chapter one indicates that these two different views of rights would make the practice of rangatiratanga within the liberal democratic state impossible. Ngāi Tahu has responded to this position by claiming to practice rangatiratanga through having economic independence and therefore gaining greater control over their affairs. Members of Ngāi Tahu explain that the aspects of rangatiratanga that are not able to be realised through having economic independence have been internalised; it is for the internal structures of Ngāi Tahu to affirm their identity as the tangata whenua of Te Waipounamu. Based upon this understanding, Ngāi Tahu rangatiratanga appears to operate on two levels; one for external practicality, and one for internal identity. This position challenges the political theory discussed in Chapter One.

This chapter now returns to that theory in order to understand whether Ngāi Tahu are exercising rangatiratanga or whether the iwi has just become economically independent. The outcome is heavily dependent on whether Ngāi Tahu are able to retain an indigenous identity from within a corporate structure. This thesis is unable to definitively comment upon this outcome for two main reasons. First, it is simply too soon after the Ngāi Tahu settlement to ascertain whether Ngāi Tahu have managed to retain an indigenous identity from within a corporate model. Interviews with papatipu rūnaka members and comments from members of TRONT indicate that Ngāi Tahu is still undertaking a process to find away of synthesising aspects of Ngāi Tahu culture with the corporate model, a definitive assessment at this point would be premature. Second, even if a number of years had passed since Ngāi Tahu had received settlement redress, the theoretical framework is inadequate for assessing an indigenous people who claim to be exercising rangatiratanga from within a liberal democratic state.

Both liberal democratic theory and indigenous self-determination arguments have their shortcomings for assessing Ngāi Tahu rangatiratanga. Liberal arguments are rigidly grounded in their own perspective of equality and attempt to provide for

other cultures with little appreciation of their basis while arguments for indigenous self-determination cling to the view that prior habitation equates to certain rights without acknowledging the political reality of an existing liberal democratic state. However, the greatest difficulty with both of these views, for the purpose of this thesis, is that they give no indication of acknowledging the other. It is for this reason that they are ill equipped for assessing an indigenous group that claims to exercise rangatiratanga from within the liberal democratic state. Each theory is too pure to assess the political reality of Ngāi Tahu; an iwi that is undertaking a process to synthesise aspects of both liberal democratic thought and rangatiratanga. For this reason it is proposed that a new theoretical framework is required, one that adopts aspects of both these schools of thought in order to more accurately assess contemporary Ngāi Tahu rangatiratanga.

### **Premature assessment**

Ngāi Tahu now claim to exercise rangatiratanga by operating effectively in a competitive economic environment while retaining their indigenous identity within internal structures and practices. However, it is simply too soon after settlement to conclusively determine whether Ngāi Tahu have been able to effectively integrate aspects of indigenous culture with aspects of the liberal democratic state. It would be premature to make a conclusive deduction as to the way Ngāi Tahu rangatiratanga is being exercised a mere six years after settlement assets have been received. The different views of Tahu Potiki and Te Maire Tau as well as comments from papatipu rūnaka members indicate there is still much discussion and development to take place before Ngāi Tahu has found an effective way of ensuring their indigenous identity can be sustained from within a corporate structure.

There are differing views from within Ngāi Tahu as to how traditional values can be maintained within a corporate environment. Te Maire Tau, a strategic adviser for TRONT, acknowledges this difficulty: “The challenge for us is to synthesise the traditional tribal values with corporate capitalist values. That tension is always going to exist and we’ll have to manage it.” (Ansley, 2004: 17) Tau does not speak further on how this synthesis is to take place; however, Potiki goes into greater detail on this issue.

As discussed in the previous chapter, Tahu Potiki believes aspects of Ngāi Tahu tradition should be embraced within internal practices. “So as not to become an invisible people swallowed up by the encroaching tide of globalism we must retain and maintain our identity markers or simply dive in and accept our lot as part of the homogenous world society. This is not our character and we will always opt for the retention of our unique culture.” (Potiki, 2000: 51) Tau sees things differently, he considers the best way forward is to focus on reality as opposed to ideals: “As a tribe, we have to recognise that the world has changed. We’re a capitalist democratic society with liberal values. As a tribe – and as a people as a whole – we have to accept that we’re no longer a traditional community with traditional values, because capitalism won’t back down.” (Ansley: 17)

Te Maire Tau thinks the best way forward for Ngāi Tahu is to embrace all aspects of the existing state. He believes that after settlement members of Ngāi Tahu should be just like any other person in New Zealand: “Once you get to the end of the rainbow and you get your pot of gold, what do you do? You get a life. You become like everyone else. The thing about the settlement of the claim is that it makes you like every other New Zealander. You don’t have any moral high ground. You’re equivalent to everybody else. So you get a life and you get on with it.” (ibid: 18) Tau appears to advocate for Ngāi Tahu to forgo aspects of tradition and embrace liberal values. He explains further: “For capitalism to work, you need Protestant Calvinist values. That’s a work ethic, a savings ethic. You don’t rely on the hand of God or your ancestors or your past to solve it. With Protestant values, you take control.” (ibid) This raises the question as to how an indigenous identity would be sustained from within a corporate structure.

Potiki clearly acknowledges that the corporate model is not the ideal vehicle for Ngāi Tahu rangatiratanga:

*It [the corporate model] will ultimately be unable to serve iwi except as a producer of profit ... The share-holder is defined by whakapapa and there is no expectation to perpetuate the cultural essence of the iwi. Perhaps that this is the lot of most iwi members in the 21<sup>st</sup> century. They are content to expect only what all other citizens enjoy. Their Māori connections are simply a sentimental, historical connection to land and a few important ancestors.” (Potiki: 54)*

Potiki believes the key to utilising the corporate model, in order for it to provide the greatest benefit for Ngāi Tahu, is through the iwi defining the “parameters and the use of the corporate entity, not the other way around. The corporate should inhabit

the periphery, not the centre.” (ibid: 54) In order to avoid being consumed by the corporate structure Potiki advocates for the re-establishment of traditional values within a modern context and refers to this as “conscious traditionalism”. He provides an example from his own rünaka to illustrate this point:

*Within my own rünaka we have recently declared in our constitution that the leadership, or upoko position, of our hapū does reside with certain families and this right emerges from the traditional principles of Māori land tenure and mana whenua. We also decided that certain leadership roles do reside only with male descendants. Although this is potentially controversial it is tempered with the responsibility to perform certain rituals and provide appropriate leadership. (ibid: 56)*

Potiki supports the active re-establishment of traditional Ngāi Tahu values within a contemporary context and identifies the sources of these values as “whakatauki, pepehā, waiata, kōrero tawhito, kōrero atua”.<sup>24</sup> He believes that “A formal process is required that allows us to extract these values and transform them into practical models that will underpin our leadership structures.” (Ibid: 57)

Here are two quite distinct views from within Ngāi Tahu. Tau advocates fully embracing the aspects of the existing state that enable Ngāi Tahu to be more economically independent and thus, more powerful. However, he does not mention how Ngāi Tahu will maintain and nourish a distinctive identity. This raises concerns as to how Ngāi Tahu would be differentiated from any other corporate player within the marketplace. Tahu Potiki is alert to this position and strongly believes that aspects of Ngāi Tahu traditional culture need to be transplanted into a modern context in order for the iwi to have a distinguishable identity. The problem here is that if traditional practices are retained purely for their traditional nature, as opposed to them having practical basis for application, then there may be difficulty in sustaining them. The example provided by Potiki is the one from his own rünaka where only men are able to take certain leadership roles. Although this may provide strong traditional connections to Ngāi Tahu past, this may be difficult to sustain in a contemporary environment where women largely have equal roles in decision-making. The challenge that Ngāi Tahu is faced with is finding a balance between retaining traditional culture while still effectively operating in a competitive economic environment.

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<sup>24</sup> “whakatauki, pepehā, waiata, kōrero tawhito, kōrero atua” translated is “traditional proverbs, songs, ancient stories, stories from ancestors.”

Bhiku Parekh's comments upon the position of minority cultures attempting to carve out an identity for themselves from within the liberal democratic state are insightful for the current position of Ngāi Tahu. He notes that western culture has enormous economic and political power, therefore, its interaction with other cultures "occur under grossly unequal conditions, and those at the receiving end often find it difficult to make autonomous choices." (Parekh: 164) Parekh outlines two contrasting options that are available to cultural minorities in such a position and then dismisses them both: returning to a traditionalist past; and complete adoption of western culture. Parekh states that "Uncritical and wholesale assimilation of western culture is not the answer" as new aspects of culture require "appropriate indigenization." He also dismisses a return to "the certainties of the past" as these are considered to be "largely products of nostalgic myth-making and are neither related to contemporary reality nor carry conviction with many of their members." (Ibid: 165)

These two options outlined by Parekh echo the two different views of Tau and Potiki, discussed above. Tau advocates the adoption of capitalism and "Protestant liberal values" while Potiki is focused upon adopting traditional Ngāi Tahu practices and transplanting them to a contemporary context. Parekh continues by providing his view of the best option for cultural minorities in this position: "The only course of action open to such societies is to undertake the momentous task of creatively re-interpreting their culture and judiciously incorporating those elements of western culture that they approve of and can assimilate. This is a task for their cultural leaders." (Parekh: 165) This holds much in common with the current position of Ngāi Tahu. The comments from Potiki and Tau indicate that Ngāi Tahu are currently rebuilding their culture from within the liberal democratic state and going through a process of considering how this is best done. As this process is still being undertaken it is too early to comment on the ability of Ngāi Tahu to sustain an indigenous identity from within a corporate structure.

Comments from papatipu rūnaka members, referred to in the previous chapter, also indicate that Ngāi Tahu is undergoing a period of adjustment to the changes brought by the settlement. Comments suggested that economic redress has altered internal rūnaka functions such as how people work together and the incentives for doing work associated with the rūnaka or marae. The interview material discussed on pages 57 – 58 of Chapter Four indicated that the papatipu rūnaka were coming to grips with the internal changes brought by increased revenue. Although exercising

rangatiratanga through economic independence operates in a straight forward manner, difficulties arise when this form of rangatiratanga is rationalised alongside internal rŭnaka practices that are not primarily motivated by the accrual of wealth. It is at this point that it becomes apparent how difficult it is to synthesise aspects of Ngāi Tahu tradition with the corporate model.

There is a delicate balance to be struck between exercising economic independence within the liberal democratic state and retaining an indigenous identity. Although TRONT leaders see economic independence as an avenue of exercising rangatiratanga there is more to rangatiratanga than just economic independence. Mark Solomon, the Kaiwhakahaere of TRONT qualifies this: "Of course, assets are not the whole story - man does not live by bread alone - but as the second half of the century shows, once the land and waters were gone from our people, our culture and communities were very much weaker." (Solomon, 1999: 8) Solomon considers that assets are the key to maintaining Ngāi Tahu culture: "It is very hard to maintain our culture and cohesion as an iwi without assets." (Ibid) Here Solomon, like O'Regan, equates the ability of Ngāi Tahu to exercise rangatiratanga with having assets: "With increased assets, we have been able to support a revival in our marae, in our papatipu rŭnanga, in our people. Our culture, our Kāi Tahu language, our arts and most of all our sense of ourselves have not been so strong for decades." (Ibid) The Ngāi Tahu approach is to utilise the tools of the existing state in order to carve out a place for Ngāi Tahu within a contemporary context.

The theory indicates that this is a difficult, if not impossible task. Kymlicka has commented: "I have defended the right of national minorities to maintain their culturally distinct societies, but only if, and in so far as, they are themselves governed by liberal principles." (Kymlicka, 1995: 153) Parekh comments on this point "Since Kymlicka does not appreciate them [non-liberal cultures] in their own terms, he does not respect them in their authentic otherness. While defending them he also subtly subverts their inner balance and identity and transforms them into something they are not." (Parekh, 108) The danger that concerns Parekh is that through adapting to the liberal state, cultures such as Ngāi Tahu lose touch with the aspects of their identity that are not compatible with the liberal democratic state. The ability of Ngāi Tahu to exercise rangatiratanga depends upon the ability to sustain their indigenous identity. If this is not undertaken then it could be argued that Ngāi Tahu are not exercising rangatiratanga but instead they have simply



adopted aspects of liberal democratic culture in order to operate effectively within the existing state.

Although the theory indicates that it is not possible for an indigenous people to exercise rangatiratanga from within the liberal democratic framework, it is too early after the Ngäi Tahu settlement to accurately assess whether Ngäi Tahu have managed to achieve this. Comments from members of TRONT as well as those from the members of papatipu rünaka indicate that the iwi was still internally coming to grips with the changes brought by the settlement. However, even if a greater number of years had passed since Ngäi Tahu received settlement assets, this thesis argues that an accurate assessment of contemporary Ngäi Tahu rangatiratanga would still not be possible due to the inadequacy of the theoretical framework.

### **Assessing the theoretical framework**

The second reason a definitive assessment cannot be made on the exercise of Ngäi Tahu rangatiratanga is due to the nature of the theoretical framework used within this thesis. Arguments from both indigenous self-determination and aspects of liberal democratic theory have been utilised in order to gain a greater understanding of how Ngäi Tahu rangatiratanga operates within the liberal democratic state. The problem that arises is these two theoretical perspectives appear to be irreconcilable and each of these theories is too pure to effectively assess a situation that has elements of the other. The remainder of this chapter examines the theory used in order to understand where it lacks the ability to assess contemporary Ngäi Tahu rangatiratanga.

### *Indigenous self-determination literature*

Arguments for indigenous self-determination coupled with views within New Zealand literature have been used to develop an understanding of the basis of a claim to rangatiratanga. Both Ranginui Walker and Mason Durie, amongst others, have contributed to the writing on rangatiratanga within New Zealand literature. Understandings of tribal authority, the Maori relationship to land and the role of the chief are drawn upon to convey aspects of rangatiratanga. This material, supplemented with comment from the Waitangi Tribunal and interview material, has

enabled this thesis to establish a clearer view of rangatiratanga. Two common themes arise from analysis of this material: firstly, through a people and their culture having a close and long-standing relationship with the land, certain rights are considered to arise; and secondly, these rights are tightly intertwined with Māori identity.

Although this discussion on rangatiratanga within New Zealand literature has provided useful for ascertaining its basis, this understanding has remote scope for practical implementation within the reality of the liberal democratic state. In practical terms, there is a limited chance of the existing state fully acknowledging that indigenous peoples have special rights due to the status as the first inhabitants of the land. As demonstrated by the cultural redress examples discussed throughout Chapter Two, there is a fundamental clash between the liberal democratic value of equal individual rights and indigenous self-determination demands. This results in the aims of rangatiratanga not being practically recognised by the state. Although Ngāi Tahu are able to be further included in decision-making that relates to resource management within their area, there is no scope for the exercise of tribal authority as this would impinge upon the individual rights of other New Zealand citizens.

Indigenous self-determination material does not engage with the reality of the liberal democratic state. Perhaps this stance is taken as a tactic to endear greater concessions from the existing state. However, for the purposes of this thesis, this reluctance to address the existing state structures when formulating arguments to support indigenous self-determination is not constructive. The result is a theory that may have perfectly logical reasoning but no scope for practical application. It is exactly this practical application that is required to assess the rangatiratanga of Ngāi Tahu in the post-settlement era. Therefore, the weakness within indigenous rights theory lies with its inability to accept the reality of the existing order. Instead of addressing these limitations it tends to retreat from reality and formulate a theory that is based upon indigenous groups having prior and co-existing sovereignty, as argued by Tully. (Tully, 2000: 52)

In summary, indigenous rights theory is useful to this thesis in that it enables a better understanding of the basis of a Ngāi Tahu claim to rangatiratanga. However, there is limited capacity for rangatiratanga to be practically applied within a contemporary context where individual rights preside. Liberal democratic theory has proved to be constructive in order to understand contemporary Ngāi Tahu

rangatiratanga further. It is an essential tool for understanding how the contemporary state responds to indigenous demands for self-determination.

### *Liberal democratic theory*

Chapter One has identified that the basic principles of liberalism include individual autonomy, social equality and democracy. This theory has proved a useful framework to place the New Zealand settlement process within. In particular, the work of Will Kymlicka has provided an understanding as to how indigenous demands for self-determination rights are viewed by the existing state. Just as Kymlicka has attempted to provide for indigenous self-determination with a liberal framework, the Ngāi Tahu settlement has attempted to provide for aspects of Ngāi Tahu culture within the liberal democratic state. This theory has provided both a framework to assess the Ngāi Tahu settlement and has contributed to the development of an argument that demonstrates the inability of liberal democratic theory to engage with claims to indigenous self-determination.

There appears to be a failure to recognise the fundamental aspect of indigenous self-determination - that it is a claim to rights based upon status as the first inhabitants of a land. Liberal democracies only provide special rights if this is working towards alleviating some kind of unfairness or disproportionate allocation of resources. There is no ability to acknowledge the indigenous rights and identity of a group. It is this very inability that prevents liberal democratic theory from being able to accurately assess contemporary Ngāi Tahu rangatiratanga. Liberal democratic theory, through its commitment to individual equality, appears to be severely restricted in its capacity to recognise difference between cultures. As previously discussed, Ngāi Tahu are an iwi that claim to be exercising rangatiratanga from within the liberal democratic state. The difficulty that arises is the theory appears to indicate that this is not possible.

If liberal democratic theory cannot recognise the basis for an indigenous claim to self-termination, then how can an indigenous group claim to exercise rangatiratanga from within the liberal democratic state? There are two possible reasons: firstly, Ngāi Tahu are not exercising rangatiratanga, they have simply become economically independent; or secondly, Ngāi Tahu are exercising rangatiratanga and the theory is unable to adequately assess this position. This chapter argues that in order to gain

clarity on this point there needs to be a greater focus on enabling these two schools of thought to engage. Bhiku Parekh has commented: "If we are to be fair to both liberal and nonliberal cultures, we need a theoretical framework capable of appreciating and accommodating *plural* understandings of culture." (Parekh: 108) In essence, we require a new theoretical framework that incorporates aspects of both liberal democratic theory and indigenous self-determination theory in order to be in a better position to assess the situation of indigenous groups such as Ngäi Tahu.

### **New theoretical framework**

Although liberals would be likely to argue that a synthesis of liberal and indigenous values is an impossible task, this thesis proposes otherwise. It appears that the main obstacle to establishing such a framework is the liberal democratic inability to acknowledge difference. In the liberal mind, there is an immediate correlation between difference and inequality. This presents particular difficulty when culture is added to the mix. In attempting to ensure that all people have the same rights, liberal democratic thought has the potential to assimilate other cultures. There appears to be a blurring between "being equal" and "being the same". This thesis argues that the notion of equality is culturally specific and if one culture assumes that there is one overarching meaning of equality, this can only result in inequality for other cultures that do not share this understanding.

Although the position adopted by Kymlicka is still well debated within liberalism, it is argued here that if it is possible for liberalism to make such a dramatic shift in its view towards culture then there is scope for further change still. In particular, there is potential for liberalism to engage in dialogue with other cultural perspectives and acknowledge aspects of other cultures that are not based upon principles of individual equality. If this was achieved then there would be greater potential for liberalism to appreciate other cultures on a basis not strictly tied to the value of individual equality. If this argument is too optimistic, then perhaps liberalism could at least further debate the merits of acknowledging rights not based upon individual equality. There is an abrupt correlation between individual equality and inherent morality that is not well explained within liberal literature, it is simply assumed that individual equality is good. At present liberals consider rights that are not based upon individual equality, as "immoral" yet there is no explanation as to why this is so.

The work of Bhiku Parekh argues that there is scope for to a new theoretical framework that enables different cultural perspectives to engage. He contends that conflict between cultural viewpoints can be worked out from within the framework of an institutionalised intercultural dialogue. Within this dialogue, all parties have to recognise each other as equal participants and a successful outcome is also dependent on them having similar amounts of self-confidence and economic and political power. (Parekh, 2000: 337) This thesis proposes a new framework that provides for cultures to engage, such a framework would be better equipped for assessing indigenous self-determination within the liberal democratic state. Furthermore, such a framework may also have potential to facilitate discussions or negotiations between indigenous groups and the state.

Aside from this speculation as to the wider merits of a new theoretical framework, it would also enable a more accurate assessment of the exercise of Ngāi Tahu rangatiratanga within the existing state. A theoretical framework that synthesised aspects from both liberal democratic thought and indigenous self-determination would provide the tools to assess contemporary Ngāi Tahu rangatiratanga. It may be possible to understand whether aspects of rangatiratanga that are not compatible with the existing state can be effectively internalised while practicing rangatiratanga in a way that is compatible with the existing state.

## **Conclusion**

This chapter has attempted to understand whether Ngāi Tahu are exercising a new type of rangatiratanga that has adapted to the liberal democratic state or, whether this is not rangatiratanga and Ngāi Tahu have simply become an economically independent group within the liberal democratic state. The outcome depends on whether Ngāi Tahu are able to sustain an indigenous identity from within a corporate structure that is also actively competing within a free market economy. It is not possible to make a definitive comment upon this outcome for two main reasons. Firstly, because it is simply too soon after the Ngāi Tahu settlement to ascertain whether Ngāi Tahu have been able to effectively synthesise aspects of traditional culture with the liberal democratic principles. Comments from members

of TRONT and from papatipu rūnaka representatives have indicated that this is an ongoing process within Ngāi Tahu.

Secondly, even if a greater period of time had passed since the allocation of settlement redress it would still not be possible to accurately comment on the ability of Ngāi Tahu to sustain an indigenous identity from within a corporate structure. This is due to the nature of the theory used within this thesis. Both indigenous self-determination material and liberal democratic theory have their own weaknesses in relation to assessing the position of Ngāi Tahu after settlement yet, the main problem lies with their incompatibility with each other. Each is so fixed within its own reasoning there is no scope for engagement. This means the liberal democratic state largely ignores the demands of indigenous rights. Instead it provides some scope for the exercise of culture but only to the extent that it furthers the “individual freedom” of indigenous minorities. The difficulty with indigenous self-determination literature is that it fails to engage in the political reality of the liberal democratic state. This incongruence between the two theories used limits the potential for further analysis of Ngāi Tahu rangatiratanga after settlement. All that can be done is to point out the aspects of Ngāi Tahu rangatiratanga that correspond with each of the different theories. Ngāi Tahu rangatiratanga cannot be assessed as a whole. Only the individual components can be pulled out, examined then reassembled. It would be more constructive if there were theoretical tools that could assess the understanding and the practice of Ngāi Tahu rangatiratanga as a whole, without conflicting with each other. This thesis proposes that there is a need for a new theoretical framework that can reconcile aspects of liberalism with indigenous self-determination. Presently these two theories are too rigid to engage with subject material such as the position of Ngāi Tahu rangatiratanga after settlement. Furthermore, if such a framework was developed that had potential for practical use it may enable iwi such as Ngāi Tahu to practice rangatiratanga in the same way as it is understood.

## Conclusion

Although concepts of indigenous self-determination and liberal democratic theory may be pure when spoken of or placed upon paper, they mingle and intertwine in political reality. The current position of Ngāi Tahu is testimony to this; they have harnessed economic independence in an effort to carve out a place for themselves within the liberal democratic state. This is a task that surpasses the literature through attempting to meld aspects of Ngāi Tahu culture with those of liberal democracy. The Ngāi Tahu understanding of rangatiratanga remains closely tied to the understanding reflected within indigenous self-determination literature. Land, whakapapa and authority come together to solidify a claim to rights as the first inhabitants of the land. The difficulty with such a claim is that it is easily marginalised within a political system based upon individual rights where the majority rules. For this reason the practice of Ngāi Tahu rangatiratanga is quite distinct from the understanding. Economic independence enables Ngāi Tahu to be autonomous within a political system that does not provide practical recognition for rights based upon being tangata whenua. Although this tool provides physical sustenance for the iwi, it does not enable the spiritual aspects of an indigenous identity to be nourished. This is left to the internal beliefs, structures and practices of Ngāi Tahu.

The tension generated between two conflicting theoretical perspectives has formed the backbone of this thesis. The point where these two views clash is at their respective cores. Liberal democratic thought rests upon the basic principle of individual equality, succinctly summarised by Richard Mulgan as “One person, one vote; one vote, one value”. (Mulgan, 1989: 60) A claim to indigenous self-determination is based upon its distinctiveness; being the first inhabitants of a land and having a culture that is closely related to this position are considered to generate indigenous rights. Discussion within the literature indicates that these two conflicting positions are irreconcilable; liberals argue that rights based upon being the first inhabitants of a land are immoral and some liberals suggest that indigenous people would be better off appealing to socio-economic disadvantage in order to receive special recognition. Advocates of Indigenous self-determination retaliate by arguing that the existing liberal democratic state does not preside over indigenous groups, who continue to exercise their own rights irrespective of the established

state. Ngāi Tahu challenge this deadlock reached within the literature through their attempt to utilise aspects from both perspectives.

The Ngāi Tahu settlement has provided the vehicle for which to examine how this tension operates. This thesis has examined both the state response and the Ngāi Tahu response to this tension. Chapter two looked at how the state attempts to acknowledge the special relationship Ngāi Tahu have with the land while ensuring the individual rights of all New Zealanders are respected. Chapters Three and Four have looked at the way Ngāi Tahu have responded - exercising rangatiratanga in a way that is compatible with the existing state structures. Economic independence has enabled the iwi to function autonomously within New Zealand while the understanding of rangatiratanga remains tied to concepts of land, whakapapa and tribal authority.

There is a clear difference between the state response and that of Ngāi Tahu. Settlement policy has provided for Ngāi Tahu in so far that the individual rights of citizens are not impinged upon. This has meant the development of a series of provisions that enable Ngāi Tahu to further participate in decision-making processes but they do not enable the iwi to have authority over resources. In this way there has been no melding of the two perspectives; cultural redress provisions remain true to the principles of individual equality. The Ngāi Tahu response has shown much more flexibility. Ngāi Tahu have restructured and formed a corporate entity that generates funds for cultural development initiatives, amongst other things. There has been a conscious attempt to synthesis aspects of Ngāi Tahu culture with those of the liberal democratic state. The fact that Ngāi Tahu have undertaken the task suggests that there is potential for the liberal democratic state to adopt aspects of indigenous self-determination.

This thesis has looked at whether it is possible for Ngāi Tahu to exercise rangatiratanga within the state structure. Interview material and contemporary literature on rangatiratanga have indicated that Ngāi Tahu has adapted to the existing state by exercising rangatiratanga in a way that is quite different to the way it is understood. In a sense it could be viewed as 'hybrid rangatiratanga', as parts of both world views have been utilised in an attempt for Ngāi Tahu culture to be sustained within a modern context. Money functions as a universal 'freedom from state control' ticket and Ngāi Tahu have used their economic skills in order to maximise their independence from the state. The iwi no longer has to apply for



grants or have their cheques signed by the Minister of Māori Affairs, instead they make their own decisions and use their own resources to carry them out. Money acts as a bridge between the two conflicting perspectives; Ngāi Tahu are able to have greater freedom and autonomy within the existing state without the individual rights of citizens being impinged upon.

The difficulty is that this economic freedom does not provide an immediate guarantee that Ngāi Tahu culture is retained. This is a task that must be consciously carried out by the iwi. Chapter Four established that the ability of Ngāi Tahu to exercise rangatiratanga depends upon their ability to sustain an indigenous identity while operating within the liberal democratic state. Chapter Five has argued that a definitive assessment of this ability is not possible for two reasons. First, it is too soon after the settlement to state whether the internal structures of Ngāi Tahu have been able to synthesise aspects of their culture with those of that underpin the existing state. An effective synthesis of these two conflicting world views may take some time and the interview material indicated that this process is still being undertaken by Ngāi Tahu. Second, the theoretical framework used to assess contemporary Ngāi Tahu rangatiratanga is ill equipped for gauge a situation where aspects of both world views appear to be operating simultaneously.

If this thesis says that it is too early to tell whether Ngāi Tahu are in fact exercising rangatiratanga from within the liberal democratic state, then what has been established? That Ngāi Tahu have undertaken such a process in the first place demonstrates there is much greater scope for seeing engagement between liberal democratic thought and indigenous self-determination. The immediate focus of this thesis has been endeavouring to understand how contemporary Ngāi Tahu rangatiratanga operates. The wider focus has been upon the scope for New Zealand to utilise a framework that utilises concepts from different cultural perspectives in order to deal with situations that involve aspects of individual rights as well as claims to rangatiratanga.

*E tipu, e rea, mö ngä rä o töu ao,  
 ko tö ringa ki ngä räkau a te Pākehā hei ara mö tö tinana,  
 ko tö ngākau ki ngä tāonga a ö tūpuna Māori hei tikitiki mö tö mahuna,  
 ko tö wairua ki tö atua,  
 nāna nei ngä mea katoa.*

*Grow up and thrive for the days destined to you,  
 your hand to the tools of the Pākehā to provide physical sustenance,  
 your heart to the treasures of your Māori ancestors as a diadem for your brow,  
 your soul to your God,  
 to whom all things belong.<sup>25</sup>*

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<sup>25</sup> “This is probably the most quoted proverb of the last forty years. It was written by the late Sir Apirana Ngata in the autograph book of one of his grand daughters.” (Brougham & Reed, 1987: 62)

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